



Office of the City Auditor

Compliance With City Code Provisions for Public Art Report No. 0508

January 17, 2006

Scottsdale City Code Chapter 20, Article VII, *Public Art*, needs to be reviewed and revised to address issues with the calculation methodology for the annual appropriation and the requirement to deposit funds into a Fine Arts Trust Fund. The City also needs to evaluate the current arrangement with the Scottsdale Cultural Council as it specifically relates to the selection of public art and administration of the City's Public Art Program to ensure that the City's interests are protected. Finally, consideration needs to be given to incorporating the administrative costs of the Public Art Program and ongoing maintenance for artwork in the City's collection into the City's Operating Budget.

CITY COUNCIL

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January 17, 2006

To the Most Honorable Mary Manross, Mayor
and Members of the Scottsdale City Council

This is our report on Compliance with City Code Provisions for Public Art, (Report No. 0508). We would like to thank City staff as well as staff and management at the Scottsdale Cultural Council for their cooperation and assistance. The audit sets out a series of recommendations to strengthen the City's Public Art Program. While working to review and modify City Code provisions for public art, we encourage a review of the cultural improvements program set out in Section 5.3083 of the Basic Zoning Ordinance. A consolidated evaluation will avoid potential conflicts.

As well, City Council may want to consider the following as part of any future change to the Management Services Agreement between the City and the Scottsdale Cultural Council. First, the Agreement does not address the Scottsdale Public Art Board or the appointment of Directors to this Board. This oversight group effectively controls the expenditure of funds appropriated for the purchase of art. As such, consideration should be given to whether there should be a residency requirement as a condition of appointment. Second, the Agreement does not require the Scottsdale Cultural Council to have a Code of Ethics. This is not meant to imply that we have reason to believe that anyone has acted unethically; adoption of a Code of Ethics will, however, document acceptable behavior, promote high standards, and establish a framework that can be used to guide future decisions.

If you need additional information or have any questions, please contact me at 480-312-7756.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cheryl Lee Barcala".

Cheryl Barcala, CPA, CIA, CFE, CGFM, CISA, CISSP
City Auditor

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EXECUTIVE SUMMARY

An audit of compliance with Chapter 20, Article VII, of the Scottsdale City Code (*Public Art*) was included on the 2005 Audit Plan for the City Auditor's Office. The goal of this audit was to verify that:

- Annual allocations for the purchase of public art are made in compliance with requirements set out in City Code.
- Sufficient procedures are in place to adequately control the use of restricted funds.
- Funds budgeted for the purchase of public art are used in compliance with requirements in City Code.

Scope of Audit

The scope of this audit focused on the City's compliance with requirements in City Code and the efforts in place to monitor the actions of the Scottsdale Cultural Council (Cultural Council) as the administrator of the City's Public Art Program. Audit work did not include an evaluation of the performance of the Cultural Council in respect to the administration of the Program with the exception of testing 1) expenditures charged to the City as a program expense and 2) procedures in place for the solicitation and commissioning of public art.

The scope of this audit did not include compliance with:

- City Code Chapter 20, §121.1 (*Public art program; sculpture pads*). This Section was set out for coverage under separate audit work.
- Provisions in Section 5.3083 of the City's Basic Zoning Ordinance (*Cultural improvements program*). We do, however, raise an issue with the practice of using Public Art Program staff, funded by the City, as project managers for public art projects required as a condition of this zoning provision. See page 44 of this report for discussion on this issue.

Results of Work

Our work led us to conclude that the City has made a good faith effort to comply with the provisions set out in Chapter 20, §121 (b), of the City Code. We verified that annual appropriations have been made within the Capital Budget for the purchase of public art. We also recalculated the FY 05/06 allocation to check compliance and found that the amount agreed, materially, with the methodology documented by Financial Services departmental staff.

Compliance With City Code Provisions

The methodology used by the City for the annual appropriation for public art does not follow specific language set out in City Code. Historical documentation indicates that this situation is a well-known condition.

Moreover, the provision in City Code requiring funds appropriated for public art to be deposited in the Fine Arts Trust Fund is contrary to current accounting standards. In 1999 new guidance was issued by the Governmental Accounting Standards Board (GASB) that necessitated a change in treatment by the end of FY 01/02. Needed modifications to the City Code were not made when the Trust was closed. As a result, the requirement is outdated.

Finally, funds appropriated for the purchase of public art have been used to cover expenses not associated with the accession of artwork. In FY 04/05 almost \$570,000 was spent for salaries, maintenance of artwork, and other expenditures such as equipment, travel, subscriptions, and meals. Historically, agreements have allowed expenses incurred by the Cultural Council for the Public Art Program to be charged to the Fine Arts Trust Fund. The City, however, has not provided supplemental funds, from the General Fund, to cover these costs. As a result, expenditure authority in the Capital Budget was used. This practice has misstated trend data and reduced the pool of funds available for the purchase of artwork.

Discussion of the annual calculation starts on page 25 and page 21 provides a recap of approved City-funded projects and the source of funding. Discussion on the use of restricted funds starts on page 31.

Controls Over Restricted Funds

The Cultural Council maintains restricted City funds separately from other non-related monies and accounts for the results of the Public Art Program separate from other activities. We found documentation to evidence that the Cultural Council returned unspent funds at the end of FY 03/04 and FY 04/05.¹

Improvements, however, will provide better assurance that public funds are safeguarded. The Contract Administrator needs to ensure that the Cultural Council, in their fiduciary capacity, establishes an acceptable level of control when spending City funds. More importantly, management at the Cultural Council needs to ensure that sufficient controls are in place. Consideration should be given, at a minimum, to areas such as:

- Policy for in-town meals. Our audit work found that when meals were charged to corporate issued credit cards, it was customary not to turn in an itemized receipt to substantiate what was purchased and invoices were routinely processed with no details of business purpose or who was present.

¹ This statement is not to be taken as confirmation that the correct amount was returned.

- Documentation of review. Segregation of duties, such as requiring a separate review of expenditures, helps identify errors and questionable transactions. Cultural Council management stated that the Financial Officer reviewed individual invoices when signing checks and, therefore, approved purchases. Our audit procedures found no evidence of this review.
- Out-of-town travel. More stringent travel guidelines will provide better control over expenditures and set clear parameters for staff to follow. Certain travel expenditures, charged to the Public Art Program, did not appear necessary or cost-effective and documentation was not available to provide evidence that less costly alternatives were considered.
- Cell phone usage. The Cultural Council has an established policy on reimbursement if a personal cell phone is used for business but we found Public Art Program staff expensing their personal cell phones to the Program without documenting that the use was business related.

During the exit conference, Cultural Council management questioned the materiality of individual findings and whether or not they were significant enough to warrant disclosure in the audit report. As auditors, we see the issue not at the individual finding level but as an indication of the overall control within the organization. See the findings on page 34 and 46 for more discussion on internal control.

Public Art Program

The Management Services Agreement between the City and Cultural Council does not define the scope of the Public Art Program and there have been no efforts (outside those at the Cultural Council) to set parameters. Further, the City has yet to document what is considered an "administrative and programmatic cost" for use in evaluating budget requests. As such, Cultural Council management (along with the Scottsdale Public Art Board of Directors) has defined the scope of the Public Art Program with the understanding that the City will provide the necessary funding. This means that the Cultural Council assumes no financial risk for the administration of the Program. Thus, the only mechanism currently available should the City desire to control the cost of the Program is through effective oversight. We found, though, that the City has not set out goals, performance measures, and expectations that can be used to evaluate the results obtained for the funding provided.

As a result, the amount passed on to the City continues to grow as Program activities expand and Cultural Council management looks to its operating divisions to recoup general Cultural Council administrative costs (i.e., shared services). In fact, in FY 04/05, funds appropriated for the purchase of public art covered almost \$100,000 in costs associated with the general administration of the Cultural Council and collection management at the

Scottsdale Museum of Contemporary Art (SMoCA). This amount supplemented the \$2.8 million in unrestricted funds provided by the City to the Cultural Council last year. See page 44 for discussion on the need for the City to define the scope of the Public Art Program.

Other Issues

The Cultural Council, by delegation, has been responsible for preparing, and entering into, contracts used for the commissioning and purchase of artwork. Boilerplate language used in the preparation of these documents, based on a review by the City's acting Risk Management Director, includes the appropriate indemnification clauses needed to protect the City's interests. Our work, however, identified the fact that the current Agreement between the City and the Cultural Council does not provide a mechanism for the City to review and approve contracts for artwork prior to award. This practice places the City at risk should contractual arrangements commit the City to future actions. See page 49 and 54 for the discussion on the need for change in the process used to prepare contracts for commissioned artwork.

Recommendations and Management's Response

The Action Plan, starting on the following page, sets out recommendations and management's proposed actions. The full text of Management's Response can be found in Appendix A.

ACTION PLAN

No.	Recommendations and Management Response
	The City Manager should:
1	Set a due date for completion of the proposal for a new Public Art Ordinance giving consideration to the need to have public input and City Council review. If possible, proposed changes should be available in time to be included in the development of the budget for FY 06/07 (Objective 1, Finding 1).
	<p>Management Response: A task force comprised of three council members and three Scottsdale Cultural Council Board of Trustees has been formed to work on the update of the City's Public Art ordinances. This group will jointly establish a timeline for accomplishing this task. Where practical, and in advance of the task force's work, staff will incorporate recommendations into the FY06/07 budget process.</p> <p>Responsible Party: John Little, Craig Clifford Michelle Korf</p> <p>Completed By: TBD</p>
2	<p>Initiate a review of the Management Services Agreement between the Cultural Council and the City and pursue opportunities to include:</p> <ul style="list-style-type: none"> a. A more specific definition of the Cultural Council scope of work for the Public Art Program including expectations for maintenance of the City's art collection (Objective 2, Finding 4 and Objective 3, Finding 5). b. A requirement for performance measures (Objective 2, Finding 4). c. An expectation for a sufficient internal control environment and a requirement for annual certification by Cultural Council management that routine internal audits are performed to ensure that the internal controls are working as designed (Objective 3, Finding 1). d. A prohibition against entering into a contract for the purchase, commission, or donation of a piece of artwork that will be accessioned into the City's art collection, without review and approval of the terms and conditions by appropriate parties at the City, if the agreement commits the City to a future action (Objective 4, Finding 5).
	<p>Management Response: A task force comprised of three council members and three Scottsdale Cultural Council Board of Trustees has been formed to work on the negotiation of the master agreement between the City and the Cultural Council. This group will jointly establish a timeline for accomplishing this task. As with item #1, the task force will be provided with a copy of these recommendations to facilitate their discussion about the contract and ordinance update.</p> <p>Responsible Party: John Little Craig Clifford Michelle Korf</p> <p>Completed By: TBD</p>

No.	Recommendations and Management Response
	The Director of the Downtown Group should ensure that:
1	<p>The role and duties of the Contract Administrator are adequately acknowledged in overall performance expectations and work planning (Objective 2, Finding 1).</p> <p>Management Response: Underway. A job description has been created to reflect the role and duties of the contract administrator and submitted to Human Resources.</p> <p>Responsible Party: John Little Completed By: Completed</p>
2	<p>The Contract Administrator develops an adequate training plan and is allowed to pursue pertinent training opportunities when available (Objective 2, Finding 1).</p> <p>Management Response: A development plan will be prepared and resourced. The Contract Administrator has also recently attended a training session on the development of performance measures.</p> <p>Responsible Party: John Little Completed By: 3/1/06</p>
3	<p>Any funds provided to the Cultural Council for administration of the Public Art Program are disclosed in the Annual Financial Participation Agreement so City Council can consider the amount provided and any requests for funds tied to additional staff, travel, or other discretionary expenses (Objective 2, Finding 2).</p> <p>Management Response: The budget for the administration of the Public Art Program will be highlighted beginning with the FY07 Annual Financial Participation agreement.</p> <p>Responsible Party: John Little Michelle Korf Completed By: 7/1/06</p>

No.	Recommendations and Management Response
4	<p>Contract administration is enhanced by setting clear expectations for the Contract Administrator to (Objective 2, Finding 2):</p> <ul style="list-style-type: none"> a. Ensure that the Cultural Council establishes sufficient guidelines for the administration of the Public Art Program. b. Conduct an annual, in-depth review of budget requests from the Cultural Council for administrative and programmatic costs related to the Public Art Program. The process should include a requirement for zero-based budgeting and adequate documentation of planned expenses at least equal to what is required for other City programs handled in-house. c. Monitor Cultural Council expenditures charged to the Public Art Program on a periodic basis with random tests of transactions to ensure that sufficient documentation is available to support the transaction.
	<p>Management Response: The Contract Administrator will work with Public Art staff to ensure that sufficient guidelines for the administration of the program are established, understood and will keep a copy of those guidelines on file; work with Public Art and the City's Financial Services staff to ensure that the administrative and programmatic budgets related to the Public Art Program are closely reviewed, evaluated and documented; and periodically conduct tests of public art program expenditures.</p> <p>Responsible Party: Michelle Korf Completed By: Ongoing</p>
5	<p>The Contract Administrator pursues an explanation for the \$10,552 in unrestricted assets on hand at the end of FY 04/05 and seek return of these funds if there is sufficient evidence that the excess cash is the result of prior errors in calculating the return of funds to the City (Objective 2, Finding 3).</p>
	<p>Management Response: The Contract Administrator will request a written explanation from the Cultural Council for the \$10,552 in unrestricted assets on hand at the end of FY04/05 and submit it to the Financial Services Department for review and comment.</p> <p>Responsible Party: Michelle Korf Completed By: 3/1/06</p>
6	<p>The Contract Administrator establishes a process to conduct evaluations and cost-benefit analysis for planned scope expansions for the Public Art Program proposed by the Cultural Council and obtains City Council approval of proposals prior to committing additional City funds (Objective 2, Finding 4).</p>
	<p>Management Response: The Contract Administrator will require that any planned scope expansions for the Public Art Program be thoroughly reviewed and tested through the City's budget and program review process before submitting it to city council for approval.</p> <p>Responsible Party: Michelle Korf Completed By: 7/1/06</p>

No.	Recommendations and Management Response
7	<p>The Contract Administrator reviews the Cultural Council's established policies and procedures for project management and ensures that Public Art Program staff is sufficiently informed as to the documentation that should be retained in a project file. Specific care should be given to ensure that all financial events associated with a project are documented, including the date and amount of the initial project budget and the date and amount of any budget changes. At the completion of a project, the summary sheet should identify total project costs, budget increases, and funding sources (Objective 3, Finding 3).</p>
	<p>Management Response: The Contract Administrator will implement a review process to ensure proper documentation for public art projects.</p> <p>Responsible Party: Michelle Korf Completed By: 7/1/06</p>
8	<p>The Contract Administrator clarifies the expectation, with Public Art Program staff, for appropriate project management including managing the project within the approved budget (Objective 3, Finding 3).</p>
	<p>Management Response: The Contract Administrator will schedule monthly meetings with Public Art staff, which will include a review of project budgets, year-to-date expenses and variances.</p> <p>Responsible Party: Michelle Korf Completed By: Ongoing</p>

No.	Recommendations and Management Response
	The Director of the Downtown Group and the Contract Administrator should:
1	Work with staff in the Financial Services Department to develop an approach to funding administrative and maintenance expenses for the Public Art Program from the City's Program Operating Budget (Objective 2, Finding 1).
	<p>Management Response: Underway. Downtown Group and Financial Services staff have been meeting to design and implement an approach for funding the administrative and maintenance expenses for public art program expenses.</p> <p>Responsible Party: Michelle Korf Art Rullo</p> <p>Completed By: 7/1/06</p>
2	Work with the Cultural Council to obtain an evaluation of the City's art collection and deliver a report listing pieces, and the estimated cost, for any maintenance and/or restoration needed in the next fiscal year and each of the following four years for inclusion in the preparation of the budget for FY 06/07 (Objective 3, Finding 5).
	<p>Management Response: Completed. A five-year life cycle plan has been prepared by Public Art staff and submitted to the City. The plan also highlights those public art installations that have maintenance needs beyond the five-year horizon.</p> <p>Responsible Party: Michelle Korf Art Rullo</p> <p>Completed By: Completed</p>
3	<p>Determine if expectations are clearly worded so the City can expect the Cultural Council to account for Public Art Program monies as outlined in Chapter 16 of the AICPA <i>Not-for-Profit Organizations</i> Audit and Accounting Guide. If this review holds out that the City (Objective 2, Finding 3):</p> <ol style="list-style-type: none"> Can expect this as a performance requirement, the Contract Administrator should communicate this expectation to Cultural Council management. Cannot require treatment as a specific purpose fund, the Cultural Council should be required to submit monthly invoices for the services provided with sufficient documentation to support the approval of the payment for services rendered.
	<p>Management Response: Through this audit, the City and the Cultural Council have gained clarity regarding how funds should be accounted for. Management understands the Auditor's recommendations regarding the adoption of AICPA principles. Adoption of these standards will be a discussion and decision item for the task force.</p> <p>Responsible Party: John Little Craig Clifford</p> <p>Completed By: TBD</p>

No.	Recommendations and Management Response
4	<p>Work with Public Art Program staff to develop performance measures for the services provided by the Cultural Council as administrators of the Public Art Program (Objective 2, Finding 4).</p> <p>Management Response: Support. Performance measures will be developed in conjunction with the FY07 budget for the Public Art Program. The Contract Administrator has attended training for performance measures and is conducting research on public art industry measurement tools.</p> <p>Responsible Party: Michelle Korf Completed By: 7/1/06</p>
5	<p>Pursue the opportunity to require contracts for commissioned artwork that will be accessioned into the City's art collection to be reviewed by appropriate City staff to ensure inclusion of adequate provisions to protect the City's interests and to identify potential risks to the City prior to the actual commitment to commission the project (Objective 3, Finding 2).</p> <p>Management Response: The Contract Administrator will coordinate a review and update of the Public Art Program's boilerplate contracts for artists with the appropriate city staff (Legal, Risk, Finance).</p> <p>Responsible Party: Michelle Korf Completed By: 9/1/07</p>
6	<p>Require the Cultural Council to document sufficient guidelines for the Public Art Program. Specific attention should be given to records retention, including documentation such as (Objective 3, Finding 4 and Objective 2, Finding 2):</p> <ul style="list-style-type: none"> a. The selection panel composition including the name of each member, the constituency represented, and whether the member had a voting or non-voting role. b. A summary of the selection panel results. c. Whether the Board adopted the selection panel recommendation and if not, the reasons why. d. The date and invitation for community meetings or focus groups held after the artist is selected; and if such a meeting is not held, an explanation of why such a meeting was deemed unnecessary. <p>Management Response: The Contract Administrator will work closely with Cultural Council staff to require proper documentation for tracking public art projects.</p> <p>Responsible Party: Michelle Korf Completed By: 7/1/06</p>

No.	Recommendations and Management Response
7	<p>Consider, in consultation with the Public Art Program staff and the Scottsdale Public Art Board, if changes are needed to the existing guidelines on selection of artwork to ensure that practices appropriately reflect the City's position on (Objective 3, Finding 4):</p> <ul style="list-style-type: none"> a. Commitment to public participation during the selection of public art. b. Use of a selection panel, including voting rights, selection of panelists, and documentation of the selection process. c. Community outreach efforts as part of the consideration for siting and selection of public art.
	<p>Management Response: In consultation with the Cultural Council, the Contract Administrator will develop a performance measure that reflects the City's commitment to public participation.</p> <p>Responsible Party: Michelle Korf Completed By: 3/1/06</p>
8	<p>Review and consider, in consultation with the Public Art Program staff and the Scottsdale Public Art Board (Objective 3, Finding 6 and Objective 3, Finding 7):</p> <ul style="list-style-type: none"> a. Appropriate restrictions for the placement of public art for the preparation of a proposed definition of "public location" for use in crafting the re-draft of the Public Art Ordinance. b. A proposed definition for the term "public art" that can be used when crafting the new Public Art Ordinance as a means of determining if a proposed piece of artwork should be purchased from restricted funds. c. Appropriate funding sources for future purchases of artwork that do not meet the definition of public art and a proposal for consideration as part of the development for the new Public Art Ordinance.
	<p>Management Response: The Contract Administrator will work with Public Art staff to develop recommended definitions that will bring clarity to the terms "public location" and "public art."</p> <p>Responsible Party: Michelle Korf Completed By: 9/1/06</p>

No.	Recommendations and Management Response
	The Budget Director should direct staff to:
1	Retain the worksheets used to calculate the initial amount included in the proposed and adopted budgets (Objective 1, Finding 2).
	<p>Management Response: We concur. Staff will be instructed to retain the necessary supporting documentation used in the calculation of arts funding for the City's proposed and adopted budgets.</p> <p>Responsible Party: Art Rullo Completed By: 6/30/06</p>
2	Develop procedures sufficient to ensure that the difference between the initial calculation of the appropriation and what would have been calculated using the final adopted budget is checked to identify situations that may be material enough to warrant correction the following year (Objective 1, Finding 2).
	<p>Management Response: We concur. Staff will develop written procedures to document the reconciliation between the initial arts funding calculation used in the City's proposed budget and adopted budget.</p> <p>Responsible Party: Art Rullo Completed By: 6/30/06</p>
3	Evaluate the level of documentation needed to support various calculations, giving particular attention to statutorily mandated calculations, and document what should be retained (Objective 1, Finding 3).
	<p>Management Response: We concur. Staff will be instructed to review and retain the necessary supporting calculations used in the development of the City's proposed and adopted budgets.</p> <p>Responsible Party: Art Rullo Completed By: 6/30/06</p>
4	Revise Records Retention Schedules and submit to the City Clerk for review, if needed (Objective 1, Finding 3).
	<p>Management Response: We concur. As needed, staff will periodically update the Records Retention schedules filed with the City Clerk's Office.</p> <p>Responsible Party: Art Rullo Completed By: 6/30/06</p>
5	Document the procedure that will be used to track interest earnings allocated to the capital project for public art and the steps that will be taken to ensure that all key stakeholders are informed of the amount available for future budget considerations (Objective 1, Finding 4).
	<p>Management Response: We concur. The Budget and Accounting staff will develop written procedures to document the method used to allocate interest earnings to the Arts In Public Places project.</p> <p>Responsible Party: Art Rullo Completed By: 6/30/06</p>

BACKGROUND

Art, in various forms, has been part of Scottsdale's identity for many years. Prominent artists such as Philip Curtis settled in the area long before the City was incorporated and historical records indicate that donations of artwork to the City date back to the early 1960s. In fact, in 1967 the City Council established a Scottsdale Fine Arts Commission (Fine Arts Commission) that remained in effect until 1987 to provide strategic support for the procurement and solicitation of artwork for the City's collection. The Public Art Program that the City has today started with the vision of this group of volunteers and its support for a dedicated funding source for the accession of public art.

Public Art

Public art, broadly defined, encompasses artwork placed in a public context -- on the street, in a park, on the exterior of a building, within the common spaces of a public building and so on.

SOURCE: "The Enterprise of Process: Notes on Planning for Public Art, National Endowment for the Arts."

The City's first piece of public art dates back to 1961 when a local artist, Dee Flagg, gifted a carved wood relief titled, *Chaplain Winfield Scott on Early Scottsdale Street*, to the City. The piece was prominently displayed in the Courthouse for many years.

Other pieces of public art were acquired in the 1960s, 1970s, and early 1980s: a bronze titled, *Woman and Fish*, that was donated in 1968 for the fish pond in front of City Hall; a large grouping of Soleri bells acquired in 1968 for City Hall; a Waddell sculpture, *Mother and Child*, (a gift from the Waddell family in 1969) for the garden outside of City Hall; *Fountain of Youth* by Bennie Gonzales, paid with donations raised by Scottsdale school children, commissioned and installed in 1970; *Windows to the West* in 1973 (commissioned with a grant from the National Endowment for the Arts); *The Bridge* in 1980; and *The Yearlings* in 1985.

After adoption of the Public Art Ordinance, numerous other pieces of public art have been added to the collection. Some prominent pieces include: *Horse Fountain* (also known as the Fifth Avenue Fountain) in 1988, *One with the Eagle* and *Mustang Wall* in 1989; *Jack Knife* in 1994; *Tributary Wall* (also known as the Fish Wall) in 1999; *Knight Rise* in 2001; and, the more recent addition, *Mayor Herb Drinkwater and His Dog Sadie* in 2003. Several other works are in process.

The Role of the Scottsdale Cultural Council in Public Art

The Cultural Council is a not-for-profit organization specifically created in 1987 to assume the responsibility for the City's arts and cultural affairs. The arrangement between the City and the Cultural Council was first documented in an interim agreement; the first of a series of long-term agreements was approved by the City Council in June of 1988. The agreement currently in place dates back to 1997 and is titled, *Amended and Restated Management Services Agreement between the City of Scottsdale and the Scottsdale Cultural Council* (No. 970044). The language below sets out the general responsibilities of the Cultural Council.

The Cultural Council shall act as the official advisory and planning body on the arts and culture for the City. Advisory and planning responsibilities shall include, without limitation, developing an arts master plan, siting and selecting of public art, recommending the selection of artists for various projects and advising the City on how various projects may affect cultural amenities. The Cultural Council shall also be responsible for preserving, maintaining, and exhibiting the fine art collection of the City. It shall have such other duties in respect to the fine art collection as is provided elsewhere in this Restated Agreement, including, without limitation accession and deaccession of artworks.

SOURCE: Section 1.1 of the Amended and Restated Management Services Agreement between the City of Scottsdale and the Scottsdale Cultural Council, No. 970044, dated October 7, 1997.

The Organizational Structure of the Cultural Council

Prior to November 2004, a Board of Directors governed the Cultural Council. This group appointed the President/Chief Executive Officer of the Cultural Council, the individual responsible for the administration of the organization. The Board also appointed a Public Art and Collections Commission (PACC).

A change in governance structure created a twenty-one member Board of Trustees and vested oversight of the Cultural Council with this group. Three operating divisions were then created within the main organization (Performing Arts, SMOCA, and Public Art) and a Board of Directors was established for each division.

The Scottsdale Public Art Board

With the new organizational structure, PACC was disbanded and replaced with the Scottsdale Public Art (SPA) Board. Eighteen individuals currently serve as Board members but the size of the Board can range from a low of five appointees to a high of twenty-one. Names and term expirations of individuals currently serving in this capacity are shown in the table on the next page.

**Scottsdale Public Art Board Members
January 2006**

Member	Term Expiration
Anne Gale	May 2006
Audrey Horne	May 2006
Janie Ellis	May 2006
Connie Cravens	May 2006
Bill Heckman	May 2006
Maria Marshall	May 2006
Chris Camberlango	May 2006
Nora Trulsson	May 2007
Beryl Sherman	May 2007
Sam Campana	May 2007
Darren Petrucci	May 2007
Ruben Valenzuela	May 2007
Mike Stevens	May 2007
Richard Hayslip	May 2008
Scott Robertson (Chair)	May 2008
Junya Shao	May 2008
Susan Kay Shultz	May 2008
Fredda Bisman	May 2008

SOURCE: Public Art Director, Scottsdale Cultural Council.

In its oversight role, the SPA Board determines the method that will be used to select artists for public art projects, controls the composition of the selection panel (if one is used), approves the budget for the project, and retains final approval rights for both the selection of the artist as well as the preliminary project concept (completed after the artist is selected). Board meetings occur monthly to discuss issues and vote on items, if necessary. In its capacity, the Board reports only to the Cultural Council Board of Trustees.

Open Meeting Law and Conflict of Interest of Officers and Employees

Under the Management Services Agreement, the Cultural Council, its directors, officers, and employees must comply with Arizona Revised Statutes as they relate to public meetings and proceedings; access to public records; and conflict of interest. The Cultural Council posts agendas at various locations and copies of minutes are available upon request.

The Public Art Program

When the Management Services Agreement was first developed, a separate section titled "Management of Specific Programs" was included. Under provisions within this section, the Cultural Council was charged with administering the City's Public Art Program and expending funds designated for this Program.

Under the current agreement, the Cultural Council is contractually required to develop guidelines for the Program and to carry out duties such as choosing artists and artwork as well as maintaining the City's art collection. The language regarding payment of costs for this Program is listed below.

For the specific performance of the responsibilities contained in this section (5.0), in addition to the funding provided in section 3.1 of this Restated Agreement, the Cultural Council shall be entitled to use funds contained in the fine arts trust, established by S.R.C. Section 20-122 of the Scottsdale Revised Code. Requests for disbursement from the fine arts trust shall be made to the Contract Administrator annually, not later than June 1 or at such other time or times as the Contract Administrator may designate.

Funds obtained by the Cultural Council pursuant to this section shall only be used for the purposes described in section 5.2 above, and associated administrative and programmatic costs. The funds shall not be used to pay salaries of the staff managing the program, except with the prior written approval of the Contract Administrator.

SOURCE: Section 5.0 of the Amended and Restated Management Services Agreement between the City of Scottsdale and the Scottsdale Cultural Council, No. 970044, dated October 7, 1997.

The insert below shows information reported by the Cultural Council as the cost of administering the Program and the FY 05/06 budget approved by the Contract Administrator². For further detail on expenditures charged to the City for FY 04/05 see Exhibit A.

**Public Art Program Expenditures (in dollars)
Fiscal Years 2003/2004, 2004/2005, and 2005/2006**

Fiscal Year	Program	Cultural Council Allocation for Shared Services	Program Total
2003/2004	279,731	171,609 ⁽¹⁾	451,340
2004/2005	457,315 ⁽²⁾	77,194	534,509
2005/2006 (budget)	611,729 ⁽³⁾	109,450	721,179
Notes: (1) Indirect costs associated with the Public Art Program were paid from general monies available to the Cultural Council and not charged to the City in FY 03/04. (2) This figure includes approximately \$18,000 in expenses related to collection management for SMOCA. (3) Figure calculated by subtracting shared services from program total.			

SOURCE: Auditor summary from Contract Administrator files, Cultural Council financial statements for FY 03/04 and FY 04/05, and Cultural Council FY 05/06 budget.

² Numbers reported in this insert are unaudited and may differ from other administrative and programmatic costs discussed in other sections of this report due to reclassifications of expenditures we made when completing our work.

The Management Services Agreement sets out the process to be used to transfer money from the City to the Cultural Council. Historically, according to the Contract Administrator, the entire amount requested for administrative costs has been transferred to the Cultural Council after the beginning of the fiscal year. Funding for the purchase of artwork or payments to artists under contract for commissioned work is transferred based on requisitions submitted by the Public Art Program staff and processed by the Contract Administrator.

Program Administration

Administration of the Public Art Program is the responsibility of the Cultural Council. Staff assigned to the Program includes a Public Art Director, an Assistant Director, two Project Managers, a Collections Manager, and an Administrative Assistant. The Assistant Director and the two Project Managers directly supervise and staff the project management function that includes:

- Soliciting a call for public art project proposals.
- Forming a selection panel.
- Managing the process used to select artists for final consideration.
- Managing presentations for the Board approval at various project phases.
- Developing and managing the process to obtain public input after the artist is selected and prior to concept approval by the Board.
- Coordinating the various parties involved in the overall construction and installation of the art project.
- Administering the contract between the Cultural Council and the artist.

The Collections Manager is responsible for the maintenance and care of the art collection. When carrying out their duties, staff follows policies and procedures set by the Cultural Council and not those set by the City.

Artist Selection

According to SPA Board policies, unless a direct purchase or commission is decided by the Board,³ the list of artists for consideration will be formed by either an open invitation method or a limited invitation method. This step is referred to as the "call for artists." According to the Public Art Director, the method used to identify interested artists can vary from project to project. For example, in one project an open invitation might be used to solicit any artist interested in submitting a proposal while another project may only invite a

³ Board policies give the Board the ability to make a direct purchase or direct commission of public art without going through a selection process. According to the Public Art Director, this is done rarely and examples of direct selection include the LOVE sculpture by Robert Indiana and the upcoming bridge at the Scottsdale Waterfront by Paolo Soleri.

group of artists that work with the particular type of art envisioned for the specific site.

After the call for artists, the next step is to reduce the list to, usually, a "short list" of three artists. Typically, these artists will present their concepts in person to a selection panel comprised of Board members, City staff, professionals in art or architecture, and citizens. Artist proposals are ranked on a number of dimensions and the top candidate is presented to the SPA Board for approval.

The City's Role in the Public Art Program

The City Council and a variety of City staff have roles and responsibilities in the Public Art Program. The City Council approves the Annual Financial Participation Agreement between the City and the Cultural Council. As well, under City Code, the City Council is the final level of appeal for public art selection decisions. These City divisions or departments are also involved:

- Financial Services Department - Budget Division staff calculates the annual allocation for the purchase of public art and prepares the budget for City Council approval. Accounting Division staff calculates the interest to be credited to the pool of money available to purchase public art when monies are appropriated but not yet expended.
- The Downtown Group - Since January 2004, the responsibility for the administration of the Management Services Agreement resides with the Deputy Director of this work group. Duties include approving the budget and expenditures for the Public Art Program, serving as the liaison between the staff at the Cultural Council and the City, and approving disbursement of City funds to the Cultural Council.
- The Capital Project Management Division of the Municipal Services Department - The Project Manager assigned to a City construction project typically serves as a member of the artist selection panel and ensures the artist and the project architect or general contractor coordinate the incorporation of public art into the project.

Accounting for Monies Provided for the Public Art Program

The Management Services Agreement requires the Cultural Council to adhere to generally accepted accounting principles (GAAP) for not-for-profit organizations when reporting the result of operations. If the Cultural Council receives any monies from the City for the Public Art Program, the money must be treated as restricted revenue and used only for the purposes set out; any money received and not used for this purpose must be returned to the City. There is an exception to this requirement; the Cultural Council may request to retain the money by providing the Contract Administrator with a list of projects or other uses that will be covered with the remaining funds.

According to Cultural Council management, internal financial statements are prepared in a modified fund format using the fund categories of Cultural Management Services, Scottsdale Center for the Performing Arts (SCPA) Operations (i.e., operations and programming of the Center for Performing Arts), SMOCA Operations, and Public Art. Restricted resources from the City for the Public Art Program are tracked in the Public Art Fund.

Funding for the Acquisition of Public Art

In 1985, at the urging of the Fine Arts Commission, the City Council adopted Ordinance 1836 and formalized the requirement for an annual appropriation for use in acquiring public art. The following language summarizes the provisions included in this Ordinance:

That the City of Scottsdale accepts a responsibility for enhancing the environment with visual art. Such art has enabled people in all societies to better understand their communities and individual lives. Artists capable of creating art for public places must be encouraged.

One (1) percent of the amount budgeted for capital improvement projects in the annual budget is appropriated to the fine arts trust fund. This appropriation shall be made based on the pro rata share of each fund type budgeted for capital improvements.

The Council Action Report submitted with the Ordinance set out two specifics:

- That the Fine Arts Commission voted to recommend that a fixed percentage (1 percent) of authorized capital construction costs be set aside for the selection, acquisition, and installation of artwork in public places.
- That City staff did not recommend inclusion of projects funded with general obligation, revenue, or municipal property corporation (MPC) bonds. The reasoning given for this position was:
 - Citizens may be reluctant to pay for bond issues that included additional funds for the purchase of art.
 - Funds generated may be in excess of what is needed.

A review of budget documents indicates that the annual appropriation prior to FY 89/90 was limited to projects funded from current revenues and Water/Wastewater funds.

Integrated Art in Public Buildings

In FY 89/90, there was a shift in policy and the capital budget was developed with the understanding that 1 percent of the capital improvement budget for public buildings funded with general obligation bonds would be allocated for the purchase of integrated art. In 1991, the City Council formalized this policy with the adoption of Policy Issue Resolution (PIR) #19. The wording in this Resolution is as follows:

WHEREAS, the City of Scottsdale in fiscal year 1989-90 began allocating one percent of public building projects funded through general obligation bond funds for the acquisition of public art;

WHEREAS, the intent of this policy is to allocate funds which must be tied directly to the interior or immediate exterior of the public building project for which the bond funds are allocated.

The Resolution gives the City's Capital Improvement Plan (CIP) Coordinator responsibility to determine which projects are designated as "public buildings" and requires that the Capital Project Coordinator work together with the department that will inhabit the building and the Cultural Council to achieve the objective of acquiring public art for the building.

Funding for the Acquisition of Public Art Comes from Projects Other Than Construction

The Fine Arts Commission recommended a fixed percent of the amount of authorized capital construction costs be set aside for the purchase of public art. Language used when the ordinance was crafted picked up the phrase improvement project instead of construction costs as the base.

Over the course of the last twenty years, however, the definition of a capital improvement project has expanded beyond the standard concept of construction. As a result, the CIP now includes funding for a wide range of capital assets such as computers, software applications, radio systems for the Police Department, equipment for new facilities, and new programs such as the transition to a City fire department. More recently, various revitalization projects in the Downtown and southern area of the City have also been included.

For FY 05/06, more than \$13 million in new funding was included in the CIP for technology-related assets and community revitalization efforts (including a \$4 million contingency for the purchase of open space in Downtown). These projects were included in the base calculation for the FY 05/06 appropriation for public art.

Funding for Public Art is a Negotiation

Other factors impact the funding available for public art. Documentation indicates that as far back as 1995, elective decisions were made to

incorporate public art as a component of a City construction project when possible. As a result, the total amount that the City spends on public art is a combination of the annual appropriation (seen as a pool of funds that can be used at the discretion of the SPA Board), an allocation for integrated art as a component of bond-funded "public buildings," and other projects as negotiated between City staff and Cultural Council staff. The insert below shows open City-funded projects and the funding source at June 30, 2005.

**Public Art Project Budget and Inception-to-Date Expenditures by Project
Fiscal Year 2004/2005**

Project	Amount Approved	Total Invoiced To Date	Fund Source (1)
CAP Lighted Sports Basin	\$ 255,700	\$107,566	Bond
Downtown Artist Transit Shelters	180,000	155,280	Elective
Old Town Parking Plaza	95,000	65,000	Elective
Waterfront Bridge (Soleri)	43,000	20,871	Bond
Marshall Way Bridge Underpass	150,000	30,000	Elective
McDowell Road Senior Center	80,000	64,390	Bond
McDowell Mountain Ranch Park/Aquatic Center (Note 2)	10,000	10,000	Bond
Chaparral Water Treatment Plant	75,526	16,892	Bond
Arabian Library (Note 2)	8,600	0	Bond
Police District 1 Plaza	310,000	5,000	Bond
30th Anniversary Temporary Art	4,250	250	AIPP
WestWorld	250,000	0	Bond
Indian School Road Widening Project	50,000	16,275	Elective
Scott Family Memorial (not including public donations)	100,000	0	AIPP
Crosscut Canal	20,000	0	Elective
Scottsdale Road Widening Project	395,000	33,425	Elective
Segura Archives (additional prints for the SMOCA collection)	2,668	2,668	AIPP
Indian Bend Road Widening Project	50,000	2,325	Elective
Arts Festival Temporary Art	6,000	6,000	AIPP
Arts Register	2,500	2,500	AIPP
Scottsdale Stadium (renovation of prior public art project)	30,000	30,000	AIPP
Total	\$2,118,244	\$568,442	
Note: (1) Fund sources: <ul style="list-style-type: none"> • AIPP – Funding from the annual base appropriation for public art. • Bond – Bond funded projects • Elective – Funding for a public art component on an elective basis. (2) The amount approved reflects only the artist fee and not the full project budget.			

SOURCE: Figures provided by Contract Administrator, unaudited.

Historical Perspective on Funding for the Purchase of Public Art

The number of years in which the provisions in City Code have been in effect coupled with changes in accounting treatment and presentation of budget information create a situation in which historical data is not easily compiled to present an inception-to-date record of appropriations and expenditures. In general, budget records show that the amount appropriated for the purchase of public art has increased. For a perspective on trends:

- At the end of FY 92/93, \$1,067,200 had been appropriated for the purchase of public art. Budget documents show that \$133,500 came from 1989 General Obligation bonds, \$327,000 from the General Fund and \$606,700 from the Water/Wastewater Fund.
- In FY 93/94, the 1 percent appropriation was \$123,000, entirely from the Water/Wastewater Fund. This means that in the eight years subsequent to the adoption of the requirement, 61 percent of the monies came from Water/Wastewater funds.
- In FY 95/96, \$187,200 was appropriated with \$53,200 coming from the General Fund and \$134,000 from Water/Wastewater funds.
- In FY 99/00, the capital budget increased almost \$165 million, in comparison; the total capital budget in FY 90/91 was \$80 million. In FY 99/00, \$342,500 was appropriated for the purchase of public art, an amount close to the total allocated during the first four years following adoption of the Public Art Ordinance.
- In FY 01/02, the capital budget increased by \$175 million and the appropriation for the purchase of public art was \$407,000.
- The adopted budget for FY 04/05 shows an inception-to-date⁴ appropriation of \$5.3 million with estimated inception-to-date expenditures of \$3.2 million.

When reviewing the trend data, it is important to remember that funding for the acquisition of public art has come from various sources and the inception-to-date total listed above may not reflect all expenditures.

The table on the following page shows the amount transferred to the capital project for public art from other capital projects in the last three years. These figures, however, do not reflect the amount paid out and may not reflect the total dedicated for use in acquiring public art as other expenditures may be recorded against the specific construction project.

⁴ The inception-to-date appropriation may be incorrect as we found at least one point in time (FY 95/96) when there is no re-budgeted amount listed. As a result, the total may only reflect activity from this point.

**Sources and Amounts Contributed to
Capital Project Account #P8740
July 1, 2002 through June 30, 2005**

Fund Source	FY 02/03	FY 03/04	FY 04/05	Total
One Percent Allocation	\$278,100	\$717,800	\$1,050,800	\$2,046,700
Budget Transfers from Capital Projects	49,363	185,700	863,976	1,099,039
Total	\$327,463	\$903,500	\$1,914,776	\$3,145,739

SOURCE: Capital Project Management Division's report of budget transfers to Account #P8740, unaudited.

Tracking and Use of Funds Designated for the Purchase of Public Art

City Code restricts the use of funds appropriated under provisions of Chapter 20, §121.

Accession and acceptance of art work – The City Council shall either accept works on behalf of the city directly or designate, by contract, the authority of the Scottsdale Cultural Council to accept works of art and to expend funds pursuant to this division for the accession of art.

SOURCE: Scottsdale Revised Code, §20-121(d).

Provisions also require funds to be deposited in a Fine Arts Trust Fund and for interest to be allocated based on the City's regular monthly investment earnings.

For many years, the funds appropriated for the purchase of public art were deposited in a Fine Arts Trust Fund as specified in the ordinance. The balance in the Trust earned interest as required. In 1999, the Governmental Accounting Standards Board issued new guidance that required the City's Accounting Division to reclassify the accounting for the funds designated for the purchase of public art. The new guidance required compliance by the end of FY 01/02. As a result, the Fund was closed and all remaining monies were transferred back to the General CIP Construction Fund and credited to capital improvement project #P8740 *Art in Public Places*.

Under current practice, the City continues to allocate interest to the balance of funds available for the purchase of art. This additional revenue has not been used, according to the Budget Director, to increase the annual appropriation.

SCOPE AND METHODOLOGY

To address the audit objectives, we:

- Conducted interviews with City personnel in the Downtown Group, the Budget Division, the Accounting Division, the Capital Projects Management Division, the Community Services Department, Cultural Council Public Art Program management and staff, and other management staff at the Cultural Council.
- Reviewed financial records provided by the parties above including detail trial balance records of both the City and Cultural Council for FY 03/04 and FY 04/05.
- Reviewed Scottsdale City Code, the Agreement between the City and the Cultural Council as well as policies and procedures and researched the history of the ordinance and management services agreements through Council Action Reports and other documentation.
- Reviewed a sample of contracts with artists and requested a review by the Risk Management Division of the Financial Services Department.
- Consulted with the City Attorney's Office on expenditures and contracts.
- Verified that the FY 05/06 appropriation for public art followed the methodology set out by Financial Services departmental management.
- Obtained reports from the Capital Project Management Division to identify transfers from other capital projects to the Art in Public Places project.
- For FY 04/05, selected a random sample of expenditures and art project files, reviewed all charges on corporate issued credit cards recorded as a Program expense and audited travel reconciliations, when available.
- Performed work to reconcile cash balances for FY 04/05 and investigated several additional categories of expenditures.
- Attended meetings of the SPA Board.
- Reviewed Administrative Regulations, Comprehensive Financial Policies, and various other policies related to travel and business meetings.

Audit work was conducted in accordance with generally accepted government auditing standards as they relate to expanded scope auditing in a local government environment and as required by Article III, Scottsdale Revised Code, §2-117, *et seq.* Survey work and audit testing took place from August to December 2005, with Mary Edmonds and Cheryl Barcala conducting the work. Findings considered immaterial were discussed with management and included issues such as determining if the Cultural Council was required to credit contributions and other miscellaneous income earned by the Public Art Program when calculating the amount to be returned to the City, the need for an SPA Board Ethics Policy and other similar issues.

OBJECTIVE 1: DETERMINE WHETHER THE METHODOLOGY USED FOR THE ANNUAL APPROPRIATION FOR PUBLIC ART COMPLIES WITH THE STATUTORY REQUIREMENTS AND WHETHER INTEREST EARNINGS ARE ALLOCATED AS REQUIRED.

FINDING 1: City Code provisions that address the annual appropriation for public art need to be revised.

CRITERIA: Scottsdale Revised Code, §20-121 (b), states that 1 percent of the amount budgeted for capital improvement projects in the annual budget is appropriated to the Fine Arts Trust Fund.

CONDITION: City Code provisions need to be revised.

First, language in City Code for the annual appropriation does not transition to a calculation methodology that can be implemented without the need for interpretation. Specifically, Chapter 20, Article VII does not incorporate definitions of “budgeted”, “capital improvement project” or “annual budget” for use in determining how to arrive at the base to be used in the calculation. Without these definitions, numerous assumptions must be made in an attempt to reach an allocation that meets the intent of the provisions. For example:

- 1) Did the City Council intend, within the definition of capital improvement project, to include monies budgeted for the purchase of land, furniture, computers and other similar expenditures not considered to be actual cost of construction? A conclusion that the current definition of capital improvement project mirrors what City Council had in mind in 1985 will result in a different appropriation than what would be calculated using a more restrictive definition.
- 2) Did the City Council intend to include capital improvement projects funded with bonds (MPC, General Obligation or Revenue), contributions, developer fees, grants or other funding sources that might have some form of restriction on use (e.g. forfeited funds obtained as a result of RICO laws)? Including projects funded from these sources as part of the calculation base is troublesome and, in some cases, would create issues of non-compliance with legal or contractual requirements.

We obtained the Council Action Report and minutes from the 1985 City Council meeting held to consider adoption of the Public Art Ordinance and found there is little information available to clarify the intent. We did note, however, that the actual proposal by the Fine Arts Commission was to allocate 1 percent of **capital construction cost** [emphasis added] and not 1 percent of the amount budgeted for **capital improvement projects** [emphasis added]. We also reviewed historical documentation and determined that various methods have been used in the past to arrive at the appropriation. It appears, though, that a consistent methodology has been in place since 1995.

Second, provisions in City Code setting out a Fine Arts Trust Fund and requiring annual appropriations for public art to be deposited in this Fund can not be adhered to without creating a situation of non-compliance with generally accepted accounting principles. These requirements are out-dated and need to be removed.

Management in both the Budget Division of the Financial Services Department and the Downtown Group stated that the current situation is a well-known condition that has existed for many years. The Contract Administrator is currently working with staff in the Financial Services Department, the City Manager's Office, staff at the Cultural Council, and the SPA Board to develop a proposal for a new Public Art Ordinance. The Contract Administrator stated that the goal is to have a funding plan that can be used in formulating the City budget for FY 06/07.

CAUSE: Modifications to City Code were not presented for City Council consideration when it became apparent that changes were needed. The issue has been exacerbated over the years as the volume and nature of projects incorporated into the CIP has increased.

EFFECT: The long-standing disparity between City Code language and actual implementation has multiple effects. First, the importance of City Code as a regulatory document is diminished when management allows staff to operate out of compliance with statutory mandates. Second, it creates a situation in which proponents of increased financial support of City-funded art projects can continue to question the amount appropriated with some valid point as to why the methodology does not follow the specific wording. Finally, when an individual or group of individuals is allowed to interpret City Code outside of the normal policy process, it opens the possibility that other methodologies may be deemed just as reasonable.

RECOMMENDATION: The City Manager should set a due date for completion of the proposal for a new Public Art Ordinance giving consideration to the need to have public input and City Council review. If possible, proposed changes should be available in time to be included in the development of the budget for FY 06/07.

FINDING 2: Documented methodology appears to have been followed in calculating the FY 05/06 appropriation for public art.

CRITERIA: Budget Division staff stated that they follow a methodology documented by a previous Budget Director when calculating the amount appropriated for public art. The methodology, as outlined, is to:

- Identify -
 - New capital improvement projects and changes in previously approved projects funded with transfers in from the General Fund.
 - New capital improvement projects and changes in previously approved projects funded with Water and Sewer Rates.
- Multiply the total values calculated in step one by 1 percent to arrive at the amount to be appropriated.

CONDITION: The amount included in FY 05/06 for capital project #P8740 agrees, materially, with the stated methodology. The amount is higher (slightly more than 2 percent), though, than what would have been calculated if the final adopted CIP had been used as the base.

Funding for public art increased \$1,338,100 in FY 05/06 in compliance with City Code requirements. Budget Division staff provided a worksheet showing the calculation using the FY 05/06 adopted CIP. According to this document, the correct appropriation would have been \$1,209,287. With the re-budget⁵ of funds carried over from FY 04/05, the total appropriation would then be \$1,307,760. The table on the following page shows the general project classifications and the funding source used to arrive at this calculation.

⁵ Funds provided to the Cultural Council for projects are treated as expended the year transferred. When unneeded funds are returned to the City, they are included in the appropriation to provide the authority to spend the funds again.

**List of Projects Used to Calculate the FY 05/06
Allocation for Acquisition of Public Art⁶**

Project Classification	Funding Source			Total
	General Fund	Water Rates	Sewer Rates	
Technology Related Assets	\$ 6,251,300	\$ 317,900	\$ 106,800	\$ 6,676,000
Water & Sewer Construction		84,130,000	9,350,000	93,480,000
Public Facility Improvements	18,846,400	22,000		18,868,400
Revitalization & Downtown	6,939,100			6,939,100
Drainage & Flood Control	(1,386,000)			(1,386,000)
Fire Services Facilities	4,451,200			4,451,200
FY 05/06 increase in capital improvement projects	\$35,102,000	\$84,469,900	\$9,456,800	\$129,028,700
One percent of the net change	\$ 351,020	\$ 844,699	\$ 94,568	\$ 1,290,287
Amount returned to the City by the Cultural Council				17,474
Increase in FY 05/06 Project Budget				<u>\$ 1,307,760</u>

SOURCE: City Auditor summary of FY 05/06 capital project budget detail provided by the Budget Division.

CAUSE: The Budget Division has established a consistent methodology for the appropriation but the CIP may go through several iterations as final revenue projections become more refined and proposed project budgets undergo revisions based on input from management and City Council.

EFFECT: There may be a variance in the amount calculated for inclusion in the budget and what would be calculated using the adopted CIP.

RECOMMENDATION: The Budget Director should direct staff to:

1. Retain the worksheets used to calculate the initial amount included in the proposed and adopted budgets.
2. Develop procedures sufficient to ensure that the difference between the initial calculation of the appropriation and what would have been calculated using the final adopted budget is checked to identify situations that may be material enough to warrant correction the following year.

⁶ See Exhibit B for a listing of individual projects.

FINDING 3: Sufficient documentation has not been retained to support the calculation of the annual appropriation for public art.

CRITERIA: City and State records retention schedules should be followed. According to the Records Retention Schedule filed by the Budget Division with the City Clerk and the Arizona State Library, Archives, and Public Records Department, budget records are to be retained for five years. Guidance from the State describes budget materials as including supporting documents. The base amount to which the 1 percent allocation for public art is applied and the annual budget allotment resulting from the calculation is supporting documentation for the City budget plan.

CONDITION: Supporting documentation for the calculation of the annual appropriation for the purchase of public art has not been retained.

CAUSE: Recent vacancies in the Division have resulted in difficulties in retaining historical knowledge and documentation.

EFFECT: The City lacks an audit trail to verify the accuracy of calculations. Lack of supporting documentation can lead to a lack of accountability for the accuracy of the calculation and the funding of the public art account.

RECOMMENDATION: The Budget Director should direct staff to:

1. Evaluate the level of documentation needed to support various calculations, giving particular attention to statutorily mandated calculations, and document what should be retained.
2. Revise Records Retention Schedules and submit to the City Clerk for review, if needed.

FINDING 4: Procedures do not ensure that key stakeholders are informed of the amount of interest earnings credited to the capital project for public art.

CRITERIA: City Code, §20-123, states that the Fine Arts Trust Fund is to have interest income allocated to it based upon the City's regular investment earnings. While the Code does not specifically say the interest earnings shall be made available for use, it is reasonable to expect that the funds were intended to provide additional resources for the purchase of public art.

CONDITION: Interest earnings are calculated appropriately and credited monthly as revenue to the capital project account for public art. The Budget Director reported that interest earnings are not included in the annual appropriation.

CAUSE: The Budget Director stated that there is no requirement to appropriate all of the interest earnings annually.

EFFECT: The current adopted project budget does not reflect the accumulation of interest earnings that have been credited to the account subsequent to the termination of the Fine Arts Trust Fund. As a result, parties involved in the budgeting process for the Public Art Program may not have a complete picture of the available funds.

RECOMMENDATION: The Budget Director should direct staff to document the procedure that will be used to track interest earnings allocated to the capital project for public art and the steps that will be taken to ensure that all key stakeholders are informed of the amount available for future budget considerations.

OBJECTIVE 2: DETERMINE IF FUNDS BUDGETED FOR THE ACQUISITION OF PUBLIC ART ARE USED FOR THE PURPOSE STATED.

FINDING 1: Capital project monies appropriated for public art acquisition have been used for the Public Art Program and maintenance of artwork in the City's collection.

CRITERIA: Chapter 20, §121 (d), provides City Council the authority to accept works of art or designate, by contract, the authority of the Cultural Council to accept works of art and to expend funds pursuant to Article VII of the City Code for the accession of art. The section specifies that the works shall become the property of the City and a part of the City's art collection.

Governmental accounting systems operate on a Fund basis with each Fund segregated for specific activities or objectives in accordance with regulations, restrictions, or limitations. Under the Statement of Principle, "Fund Accounting Systems," Capital Project Funds are to be used to account for financial resources used for the acquisition or construction of major capital facilities.

City Council adopted Comprehensive Financial Policies:

- Budget development will use strategic, multi-year fiscal planning, conservative revenue forecasts, and modified zero-base expenditure analysis. Each program is to be annually justified in terms of meeting intended objectives (effectiveness criteria) and in terms of value received for dollars allocated (efficiency criteria). Requests for new staff positions will only be made when needed to address program initiatives and policy directives (#3, #7).
- Balanced forecasts will be prepared to examine the City's ability to absorb operating costs due to changes in the economy, service demands, and capital improvements. The forecast will be updated annually and focus on a three-year horizon but include a five-year outlook. Life cycle costs of capital improvements will be considered so that future operating, maintenance, and replacement costs can be forecast, matched to available revenue sources, and included in the Operating Budget (#13, #20).
- Capital improvement projects will be defined as infrastructure, equipment purchases, or construction resulting in a capitalized asset costing more than \$25,000 and having a depreciable life of two years or more (#17).

Arizona Revised Statute, §42-17106, states that a county, city, or town shall not:

1. Spend money for a purpose that is not included in its budget.
2. Spend money or incur or create a debt, obligation, or liability in a fiscal year in excess of the amount stated for each purpose in the finally adopted budget.

CONDITION: Monies appropriated for the purchase of public art have been used for the Public Art Program and maintenance of the City's art collection.

In FY 04/05, funds appropriated for the purchase of art covered almost \$360,000 for personnel (six staff employed by the Cultural Council to manage the Public Art Program at approximately \$296,000), travel expenses, cell phones, meals, office supplies, equipment purchases, professional services, subscriptions, training, and other costs (almost \$62,000).

While a portion of these expenditures may be related to project management and would, therefore, be an appropriate charge to the cost of accessioning artwork, the Cultural Council does not require public art staff to track time by project assignment. Further, the City and the Cultural Council have not documented agreed upon expenses to be considered appropriate to record as a cost of acquisition. As a result, there are no records to document the percent of time spent managing City-funded projects and a potential for inconsistency in recording costs as program-related or project-related.

Moreover, Program administrative expenses charged to the capital project account are increasing. In FY 04/05 the Cultural Council added two new public art project managers to address workload, a portion of expenses (\$18,000) for the SMOCA collection were charged to the Program and more than \$84,000 in shared services (i.e., indirect costs), general liability insurance, depreciation, and other similar charges were also included.

Finally, almost \$105,000 in expenses related to public art maintenance and restoration⁷ was charged to the capital project account in FY 04/05. City Council adopted financial policies state that future maintenance and operating costs of capital improvements will be included in the City's Operating Budget.

CAUSE: The City agreed to reimburse the Cultural Council for expenses related to the Public Art Program. No additional City funding source was identified to cover costs not related to the accession of public art.

The Contract Administrator has not received appropriate training to question the use of capital project funds for operating expenses. There is no indication that previous Contract Administrators would have had a better understanding of the appropriate expenses to charge against the capital project budget.

According to Cultural Council financial statements, the decision to charge shared services as a cost of the Public Art Program is the result of an amendment to the Agreement between the City and the Cultural Council. We could not locate this document.

EFFECT: Spending money for a purpose not included in the budget is contrary to state law and allowing non-eligible costs to be charged against

⁷ This figure reflects \$29,104 in restoration costs for the public art at Scottsdale Stadium that was classified as a project cost on year-end statements of activity prepared by the Cultural Council.

restricted funds creates a situation in which the City is not in compliance with City Code.

Further, paying program related expenses from the capital budget precludes consideration of ongoing costs in the development of a strategic, multi-year plan. The practice also avoids the requirement for a modified zero-base expenditure analysis that evaluates the program in terms of meeting intended objectives (effectiveness criteria) and in terms of value received for dollars allocated (efficiency criteria). As well, recording program costs in the capital budget precludes development of trend data that can be used to examine the City's ability to absorb operating costs associated with the Public Art Program (i.e., maintenance/restoration of pieces in the collection and the day-to-day management of the collection).

Finally, spending capital money for ongoing operational costs means that less money is available for purchase of public art. The annual appropriation provides a discretionary funding source for the purchase of unique, signature pieces of public art that do not have to be integrated into a City facility. Using the funds for other purposes may negatively impact the City's ability to obtain particularly desirable art pieces that may be costly because of the popularity of the artist or the significance of the particular location.

RECOMMENDATIONS:

1. The Director of the Downtown Group and the Contract Administrator should work with staff in the Financial Services Department to develop an approach to funding administrative and maintenance expenses for the Public Art Program from the City's Program Operating Budget.
2. The Director of the Downtown Group should ensure that:
 - a. The role and duties of the Contract Administrator are adequately acknowledged in overall performance expectations and work planning.
 - b. The Contract Administrator develops an adequate training plan and is allowed to pursue pertinent training opportunities when available.

FINDING 2: Improvements in City oversight are needed to adequately safeguard public funds.

CRITERIA: Management has a fiduciary responsibility to safeguard public assets. At the City, the role of the Contract Administrator is to manage, supervise, and monitor the execution of terms, conditions, and specifications to ensure that contract providers comply with requirements.

Administrative Regulations set out the responsibility of the Contract Administrator. Specific to the Public Art Program, the Contract Administrator should have documentation to support compliance with the following:

Sections 3.1 c. and 3.1 e. of the Agreement between the City and the Cultural Council state:

The funding for any given fiscal year shall be paid by the City to the Cultural Council in payments, the time and amount of which shall be set forth in a Financial Participation Agreement signed by the parties...

Funds that are designated by ordinance or contract for a specific program or purpose shall be earmarked for such program or purpose by the City and may only be used by the Cultural Council for the specific program or purpose.

Sections 5.2 and 5.5 state:

...The Cultural Council shall establish guidelines for the administration of the public art program, which shall at all times contain provisions and procedures for the appeal of decisions concerning the public art program to the City Council...

...Requests for disbursement from the fine arts trust shall be made to the Contract Administrator annually, not later than June 1, or at such other time or times as the Contract Administrator may designate...

...Requests for disbursements shall be made in writing and shall be accompanied by a proposed budget or invoice for the expenditure of the funds requested. The proposed budget shall be subject to the approval of the Contract Administrator, who will determine whether or not the proposed expenditures and amounts are appropriate...

...Funds obtained by the Cultural Council pursuant to this section shall only be used for the purposes described in section 5.2, above, and associated administrative and programmatic costs. These funds shall not be used to pay salaries of the staff managing the program, except with the prior written approval of the Contract Administrator...

...Any funds which have not been expended as approved, during the fiscal year for which they were received, shall be returned to the fine arts trust fund...

In summary, monies provided by the City for the Public Art Program are restricted funds to be used for public art purchases and associated administrative and programmatic costs. Funds not used for those purposes must be returned to the City. Both the Agreement and City regulations entrust the Contract Administrator with ensuring public monies are used as prescribed.

CONDITION: Improvements in oversight are needed to strengthen internal control and provide enhanced safeguards over funds provided to the Cultural Council for the Public Art Program.

First, funds provided for the administrative costs associated with the Public Art Program are not listed on the Annual Financial Participation Agreement approved by City Council.⁸ These funds supplement other monies provided by the City and should be disclosed.

Second, the Contract Administrator has not ensured that the Cultural Council policies and procedures are sufficient to appropriately control the expenses passed on to the City as a Public Art Program cost. Moreover, sufficient mechanisms to analyze public art budget proposals, monitor Program expenditures, and monitor Cultural Council compliance with its own policies have not been established. A zero-based approach to the budget was not required nor was there a requirement for the submittal of sufficient documentation to justify the amounts requested. When monitoring expenditures, the review was limited to a high-level of detail (i.e., salaries, etc.) and the Contract Administrator did not undertake periodic reviews of transactions to verify compliance with established policies.

Finally, in FY 04/05, almost \$614,000 was provided to the Cultural Council in a lump sum payment after the beginning of the fiscal year for costs related to the administration of the Public Art Program. The Cultural Council placed these funds in an interest-bearing account and credited the interest earnings to the Public Art Program. However, the Contract Administrator did not monitor distributions from the account to ensure that funds were not transferred out in advance of actual cash flow requirements.

CAUSE: Focus on other priorities related to overall aspects of the Agreement may have limited the Contract Administrator's attention to internal control.

EFFECT: Use of public monies for purposes that may have been unnecessary, for items or services that might have been purchased at a lower cost, or expenditures that should not have been charged as a Program cost.

During our review of expenditures, we found corporate issued credit cards assigned to more than three employees working on the Public Art Program. Moreover, other employees at the Cultural Council had the ability to record charges against the Program cost center. When requesting supporting documentation for charges on corporate issued charge cards, we found that detailed receipts could not be provided for in-town meals charged to credit cards and certain out-of-town expenditures. We also found that credit card statements did not evidence review by anyone other than the person to whom the card was issued. We inquired about Cultural Council policies and

⁸ The Agreement between the Cultural Council and the City is a multi-year arrangement. The dollar amount provided by the City is approved annually through a Financial Participation Agreement.

procedures and found minimal guidance on the appropriate use of the credit card, no requirement for submittal of an original invoice to document items purchased, and no written requirement for management responsible for the Program to monitor expenses.

As well, the Cultural Council does not have a written policy setting out when it is appropriate to use funds for in-town food and beverages, a policy that requires detailed receipts for such purchases, or a policy regarding the use of public funds for the purchase of alcohol. Moreover, there is nothing setting out the expectation that use of funds for meals to be prudent and tied to a business purpose. From the limited expenditure documentation available, we found expenses such as the following charged as Program costs:

- Staff appreciation lunches and other lunch meetings consisting only of Public Art Program staff.
- Lunch meetings between Public Art Program staff and:
 - The City's Contract Administrator.
 - Project managers employed in the City's Capital Project Management Division of the Municipal Services Department.
 - Artists under consideration for a project or when the Cultural Council was buying a piece of art.
 - Individuals on the SPA Board and individual City Council members.
- Multiple expenditures ranging from \$3 to over \$60 identified as "company meetings" with no names or business purpose listed.

Moreover, while the Cultural Council has a travel policy it is limited and vaguely written. Our review of travel reconciliations indicated that arrangements were not supported with sufficient documentation, expenditures were charged that did not appear appropriate given the documentation available, and errors were not caught. When reviewing travel reconciliations, we found expenses that appeared inappropriate such as two instances in which alcohol was charged as a business expense;⁹ one instance in which a receipt dated after the end of a trip was included as a business expense; and one instance in which the cost of a free airline ticket was charged to the City as if it were purchased with cash. The examples on the next two pages show how travel arrangements can impact the cost of the Program.

⁹ In most instances detailed receipts were not available to allow an identification of what was actually purchased and charged as a cost of meals while out of town.

Travel Examples

Two-day conference in Washington D.C.

Depart Phoenix Wednesday, July 14 at 11:55 a.m. Arrive Baltimore at 7:27 pm
Depart Baltimore Wednesday, July 21 at 10:45 a.m. Arrive Phoenix at 12:28 pm

Expenditure	Wednesday 14-Jul	Conference In Washington D.C.		Saturday 17-Jul	Sunday 18-Jul	TOTALS
		Thursday 15-Jul	Friday 16-Jul			
Breakfast ⁽¹⁾	\$ 6.18					
Carry-On Lunch ⁽¹⁾	11.89					
Breakfast in D.C.		\$ 5.40	\$ 23.20	\$23.69		
Lunch in D.C.		13.55	17.30			
Dinner in D.C.	37.05	39.36	68.35			
Afternoon Coffee		3.47				
Food and Beverage Total	\$55.12	\$61.78	\$108.85	\$23.69		\$ 249.44
Taxi - Baltimore to D.C.	\$71.10					
Metro Rail Tokens		\$13.50				
Taxi – D.C. to Baltimore					\$90.00	
D.C. Trolley Tour		28.00				
Transportation Total	\$71.10	\$41.50			\$90.00	202.60
Hotel	\$162.59	\$162.59	\$162.59	\$170.61		658.38
Conference Fee						195.00
Airfare (Roundtrip Phoenix to Baltimore)						338.20
Preconference Tour⁽²⁾						58.00
GRAND TOTAL						\$1,701.62

Notes: (1) Purchased at Phoenix airport.
(2) Two tickets used by Cultural Council staff outside the Public Art Program.

While the appropriateness of public art staff attendance at this conference is not being questioned, the cost of the trip may have been more than necessary or prudent. For example, Cultural Council travel policies limit the cost of meals in Washington D.C. to \$51 per day but a total of almost \$250 was charged for meals. Cultural Council justification was that the employee should receive a full day allowance for two travel days and for three conference days (the third day was reported, by Cultural Council management, as a day to tour public art and museums). If the end of business travel had corresponded with the end of the conference and the per diem policy adhered to, travel costs would have been reduced by almost \$430 (\$100 for meals and \$330 for hotel accommodations).

Moreover, management approved travel arrangements to Baltimore (instead of D.C.) to accommodate a personal request of the employee. Documentation that the flight to Baltimore and the ground transportation to and from D.C. was equal to or less than the cost of a flight to D.C. and a shuttle to the hotel was either not required or not retained. As a result, there is no documentation that supports a conclusion that the entire cost of ground transportation should be considered a Program expense.

SOURCE: Auditor analysis of travel reconciliations submitted by Public Art Program staff and other related documents.

Travel Examples (continued)

Seminar on textile conservation in Colorado

A second example is the cost of a trip (\$700, in total) to a textile conservation workshop in Colorado. Again, while the conference attendance may be well justified, the total cost of the trip opens the question as to the prudent use of public funds. First, the workshop was held on a Saturday from 10 a.m. to 4 p.m. with only a morning lecture (the afternoon was set aside so attendees could share textiles they had brought). While the seminar fee was only \$45, public funds covered \$200 for the airline ticket, Friday night hotel accommodations, meals for Friday and Saturday, car rental, gas, and parking at the Phoenix Airport. The hotel and conference was less than 40 miles from the airport but there was no documentation to indicate that the Public Art Director required an analysis of the cost of a shuttle from the airport to the hotel or even questioned if travel arrangements could be made to arrive Saturday to avoid the need for a hotel room and dinner on Friday.

Second, the employee elected to extend the stay for personal reasons and, in fact, put 363 miles on the rental car while out of town. The Public Art Program covered the cost of gasoline for this personal use and, while there was an indication that the employee intended to cover the extra cost associated with hotel accommodations, an error resulted in the Program covering the cost for the extended stay.

Board-sponsored trip to Santa Monica

A third example is a Board-sponsored trip to Santa Monica in October 2004 to view its public art collection. While each Board Director attending the trip paid, at their own expense, a pre-determined amount to cover costs, City funds paid for five staff assigned to the Public Art Program to go along.⁽¹⁾ Charges included overnight accommodations at a boutique hotel, food and beverages while out of town, and rental of a van. No travel reconciliation was submitted to document the total cost of the trip and itemized receipts were not submitted to document charges at the hotel, hotel bars, or other restaurants. As a result, there is no documentation of what was purchased, consumed, the number of people in attendance for group meals, or what was included in the payment to the hotel. More importantly, there is no documentation of efforts to negotiate hotel accommodations at other facilities that might have been less expensive. The only written quote provided to document efforts to shop better rates was the one for the hotel ultimately booked. Finally, when examining receipts, we found that the Public Art Program inappropriately covered the cost of the hotel and meals associated with the Cultural Council Director of Communication. The Public Art Director had not caught this error.

(1) The Contract Administrator also went on this trip and the City paid, out of operating funds for the Downtown Group, the same pre-determined amount charged to the Board members that elected to participate.

SOURCE: Auditor analysis of travel reconciliations submitted by Public Art Program staff and other related documents.

We also identified expenditures for personal cell phones charged as a Program expense. Neither the Contract Administrator nor upper level management at the Cultural Council questioned the process used to pay invoices related to employee-owned cell phones. The Internal Revenue Service considers employer-provided cell phones or payment for personal cell phones to be taxable compensation unless the cell phone is provided under either an accountable plan (meaning there is an expectation for identification of business calls so that personal calls are not paid) or a requirement that the phone is to be used only for business (i.e., a prohibition on personal use). The conditions in existence up to and through the audit period did not meet either requirement for the cell phone payments to be considered non-taxable but there is no indication that any of the costs associated with the non-documented cell phone use was considered taxable compensation. Moreover, without documentation of business calls or a clear policy that prohibited personal use, there is no assurance that public funds did not pay for usage that was not related to business.

We also found that the FY 04/05 Public Art Program budget requested \$34,000 for the SMOCA collection. The budget represented the proposed expense as directly related to the City-owned collection housed in SMOCA (as opposed to program costs). Contrary to the budget presentation, though, expenses related to the collection management function at SMOCA (personnel, training, equipment purchases, and other costs) were charged to the Public Art Program. Included within the amount charged was \$1,315 for a consultant in New York to come to Scottsdale and conduct one-on-one training for the SMOCA Registrar and costs for the Registrar to travel to California to meet with museum officials. SMOCA, however, has its own budget consisting of several revenue sources. According to its approved FY 04/05 budget, the Cultural Council estimated receiving over \$475,000 in SMOCA earned revenue, \$900,000 in contributions for SMOCA, and almost \$870,000 in the allocation from the City for the operations of SMOCA. While the budget approved for FY 05/06 no longer includes SMOCA expenses, the Contract Administrator should have questioned why it was appropriate to consider these expenditures as a cost of the Public Art Program.

Finally, during FY 04/05, more than \$7,000 was spent from public art funds for computers, cameras, monitors, and scanners. Of this, almost \$600 was "shared" expenses for equipment purchases initiated by SMOCA staff. Using restricted funds to purchase equipment that will be used by another operating division of the Cultural Council in effect commingles restricted funds with non-restricted funds. Other purchases of equipment could not be supported with documentation to indicate that efforts were made to compare prices before purchasing the item.

RECOMMENDATIONS:

1. The Director of the Downtown Group should ensure that:
 - a. Any funds provided to the Cultural Council for administration of the Public Art Program are disclosed in the Annual Financial Participation Agreement so that City Council can consider the amount provided and any requests for funds tied to additional staff, travel, or other discretionary expenses.
 - b. Contract Administration is enhanced by setting clear expectations for the Contract Administrator to:
 - i. Ensure that the Cultural Council establishes sufficient guidelines for the administration of the Public Art Program.
 - ii. Conduct an annual, in-depth review of budget requests from the Cultural Council for administrative and programmatic costs related to the Public Art Program. The process should include a requirement for zero-based budgeting and adequate documentation of planned expenses at least equal to what is required for other City programs handled in-house.
 - iii. Monitor Cultural Council expenditures charged to the Public Art Program on a periodic basis with random tests of transactions to ensure that sufficient documentation is available to support the transaction.

FINDING 3: Changes are needed to ensure that City monies, provided to the Cultural Council for the Public Art Program, are restricted; accounted for separately; and returned to the City if not spent for acceptable Program expenses.

CRITERIA: City Code specifies that funds appropriated pursuant to the Public Art Ordinance are to be used for the purchase of artwork that will be accessioned into the City's art collection.

The Management Services Agreement states that monies earmarked for the Public Art Program are to be accounted for separately from all other funds received by the Cultural Council and used only for purposes set out in the Agreement. Specifically:

- Funds designated by ordinance or contract are earmarked and may only be used for that specific program or purpose (3.1).
- The Cultural Council is to implement an accounting system that complies with GAAP and with the provisions of the GAAP Guide for Non-Profit Corporations. Funds earmarked for the Public Art Program are to be accounted for separately from all other funds (4.1).
- Any funds not expended as approved, during the fiscal year for which they were received, are to be returned to the City unless the Contract Administrator approves a request to retain unused funds for specific projects that were not completed before the end of the year (5.5).

CONDITION: Changes are needed to provide the City with assurance that restricted monies are accounted for and returned to the City when not used.

The Cultural Council uses fund accounting to track revenues and expenditures within the following four categories:

Cultural Management Services – General administrative operations.

SCPA Operations – Operations and programming of the Scottsdale Center for the Performing Arts.

SMoCA Operations – Operations and programming of the Scottsdale Museum of Contemporary Art.

Public Art – Resources restricted to the management of public art programs of the City of Scottsdale.

For the Public Art Program, two separate bank accounts are maintained; a money market account (MMK) where monies are held until needed and an operating account that serves as the primary checking account. According to Cultural Council staff, fixed assets purchased with public art monies are recorded as an asset within that Fund.

We found, however, that practices adopted by management at the Cultural Council do not follow generally accepted fund accounting methodologies. For example, with existing practices, a transfer of money from the Public Art Fund to the Cultural Management Services Fund looks like this:

	<u>DEBIT</u>	<u>CREDIT</u>
Cash – Public Art MMK Account	10,000	
Cash – Cultural Council General Operating Account		10,000

If generally accepted accounting methodologies were followed, entries would be self-balancing within each Fund creating a record that looks like this:

	<u>DEBIT</u>	<u>CREDIT</u>
Cash – Public Art MMK Account	10,000	
Interfund Payable – Due to the Cultural Council		10,000
Cash – Cultural Council General Operating Account		10,000
Interfund Receivable – Due from Public Art	10,000	

Because accounting transactions processed by Cultural Council staff are not self-balancing within each specific Fund, entries are made periodically to the interfund account to balance the Public Art Fund. This means that transactions posted to this account cannot be tied to an audit trail of supporting journal entries and, because it is not reconciled on a periodic basis, there is no means of ensuring that the balance is correct at any particular point in time.

Similarly, there is no audit trail for transfers from the Public Art MMK account to the Cultural Council General Operating account to provide evidence that the correct amount was transferred. Without this historical record, we could not verify that restricted money was transferred to the Cultural Council General Operating account only when funds were needed to cover bills paid on behalf of the Program.

During the audit, we asked Cultural Council management staff to provide documentation for various entries recorded to the Public Art Operating account to verify that deposits could be traced to receipts reported to the City. We found that there were entries that could not be traced to either the posting of revenue or a credit against posted expenditures. As of the close of audit fieldwork, Cultural Council management could not explain a \$5,174.71 entry and could only explain an \$8,631.69 entry as a correction of an error from the prior year. If accounting entries within Funds were recorded so that the integrity of the Fund was maintained, a sufficient audit trail would exist to allow these entries to be traced and explained.

We also attempted to verify that the ending cash on hand in the Public Art Operating account and MMK account was equal to the amount reported to the City as unspent funds and remaining liabilities. We could not reconcile the cash on hand at the beginning or end of FY 04/05. Because all restricted funds are to be returned to the City at the end of the year, the cash on hand in

the checking accounts controlled by the Cultural Council should only be the amount needed to cover accrued liabilities, any amounts due to other Funds, restricted donations not yet expended, and the residual owed to the City. This was not the case. As of the end of FY 04/05, the Cultural Council reported more than \$10,000 in excess assets over and above the amount necessary to repay funds owed to the City, settle liabilities, and cover restricted donations received but not yet spent. There is no reasonable explanation for this situation to exist if the Cultural Council was in compliance with provisions that require Program monies to be restricted and returned to the City if not spent for the purpose provided.

CAUSE: The Cultural Council President and Controller both interpret "accounted for separately from all other funds," to mean only that the Cultural Council must be able to provide an annual statement of how the money was spent.

EFFECT: Internal control at the Cultural Council is not sufficient to catch errors in posting or adjustments made to arrive at the calculation of unspent City funds to be returned at the end of the fiscal year.

RECOMMENDATIONS:

1. The Director of the Downtown Group and the Contract Administrator should determine if expectations are clearly worded so the City can expect the Cultural Council to account for Public Art Program monies as outlined in Chapter 16 of the American Institute of Certified Public Accountants (AICPA) *Not-for-Profit Organizations* Audit and Accounting Guide.¹⁰ If this review holds out that the City:
 - a. Can expect this as a performance requirement, the Contract Administrator should communicate this expectation to the Cultural Council management.
 - b. Cannot require treatment as a specific purpose fund, the Cultural Council should be required to submit monthly invoices for the services provided with sufficient documentation to support the approval of the payment for services rendered.
2. The Director of the Downtown Group should ensure that the Contract Administrator pursues an explanation for the \$10,552 in unrestricted assets on hand at the end of FY 04/05 and seek return of these funds if there is sufficient evidence that the excess cash is the result of prior errors in calculating the return of funds to the City.

¹⁰ See Exhibit C for segments of the AICPA Audit and Accounting Guide, *Not-for-Profit Organizations*.

FINDING 4: Public Art Program scope expansion should only occur after review and approval by the City.

CRITERIA: The Management Services Agreement states that the Cultural Council shall administer the City's Public Art Program and shall establish guidelines for the administration of the Program. Provisions in the Agreement only address responsibilities related to:

- Selecting, placing, and accessioning art into the City's collection.
- Maintaining the City's art collection.

CONDITION: The City has not clearly defined the scope of the Public Art Program and the Management Services Agreement does not contain sufficient parameters to set boundaries for the programs, activities, or other services that are provided by the Cultural Council under the umbrella of the City's Public Art Program.

During the audit, we identified three other functions that the Cultural Council is undertaking with funding provided for the Public Art Program. These duties have not been formally considered and decided upon by the City.

First, management at the Cultural Council has entered into agreements to manage the acquisition of public art pieces funded with donations. These arrangements were not submitted to City Council or, at a minimum, the Contract Administrator for review and approval. Under current practice, donations cover the cost of acquiring the artwork but the cost of project management is passed on to the City as a cost of the Public Art Program. While we are not questioning the appropriateness of the Cultural Council acting as the Project Manager we believe the issue of using Public Art Program (e.g., City) funds to cover the cost of salaries and benefits for personnel serving as project managers should be reviewed. By covering project management expenses, the City is, in effect, donating services to the project. In our view, use of City funds for activities not sponsored by the City is a decision that should be made at the City Council level.

Second, in 1988 the City approved Ordinance No. 2018 to require integration of publicly visible works of art into private development projects in Downtown. Under City Code provisions, the developer may utilize the resources and services of the Cultural Council in selecting the artist and/or art work, in accordance with established procedures and guidelines. Under current practice, when a private developer elects to use the services of the Cultural Council, the costs associated with administration are passed on as a cost of the Public Art Program instead of being treated as cost of acquisition to be funded by the private developer. In effect, then, City funds are covering a cost that should be paid by the developer.

Moreover, while it may be desirable for public art staff to provide guidance or selection assistance for these projects, an evaluation is needed to consider:

- What services should be performed, workload analysis and staffing implications.
- Legal and risk management analysis to fully understand the City's risk if staff assigned to the City's Public Art Program serve as project managers on privately funded art projects.

Finally, the Program has been expanded to include public outreach and educational opportunities. Publications have been created to promote the public art pieces in the City's collection. Activities such as "Public Art Day" have been incorporated into the scope of the Program. These expanded activities have not been addressed in a modification of the Agreement so that the City Council is aware that additional public art funds are being used by the Cultural Council for these purposes.

CAUSE: The Management Services Agreement does not adequately define the phrase "administer the City's public art program". Cultural Council management and the Contract Administrator have interpreted the provisions to allow for scope expansion that they have deemed appropriate.

EFFECT: The Public Art Program has been developed and expanded without the customary oversight and review given to other programs provided by the City. Thus, the appropriate approval, program planning, scope definition, and cost analysis may not occur.

RECOMMENDATIONS:

1. The City Manager should initiate a review of the Management Services Agreement between the Cultural Council and the City and pursue opportunities to include:
 - a. A more specific definition of Cultural Council scope of work for the Public Art Program including expectations for maintenance of the City's art collection.
 - b. A requirement for performance measures.
2. The Director of the Downtown Group should ensure that the Contract Administrator establishes a process to conduct evaluations and cost-benefit analysis for planned scope expansions for the Public Art Program proposed by the Cultural Council and obtains City Council approval of proposals prior to committing additional City funds.
3. The Director of the Downtown Group and the Contract Administrator should work with Public Art Program staff to develop performance measures for the services provided by the Cultural Council as administrators of the Public Art Program.

OBJECTIVE 3: DETERMINE WHETHER OTHER CONTROLS SPECIFIED IN CITY CODE ARE ADHERED TO AND WHETHER PROGRAM CONTROLS ARE ADEQUATE OVERALL.

FINDING 1: Improvements in internal control are needed to reduce the potential for errors and provide more accurate management information.

CRITERIA: Internal control is a process designed to provide reasonable assurance regarding the achievement of objectives in reliability of financial reporting, effectiveness and efficiency of operations and compliance with applicable laws and regulations. The following interrelated components are part of internal control:

- Control environment – the tone of the organization.
- Risk assessment – the analysis of relevant risks.
- Control activities – policies and procedures that help ensure management directives are carried out.
- Information and communication – exchange of information in a form and timeframe that enable people to carry out their responsibilities.

CONDITION: Cultural Council internal control is not sufficient to provide the City with assurance that financial reports will be accurate, operations will be effective and efficient, and that the Program will be operated in compliance with laws and regulations. Specifically, we found that:

- Limited documentation of policies and procedures has created a situation in which Public Art Program staff may not have a consistent understanding of boundaries in which they can operate.
- Inconsistent monitoring of control activities has led to an environment where errors are not corrected and non-compliance with policies and procedures is not identified so that re-training can occur if needed.
- Erroneous classifications of expenditures remain undetected creating a situation in which management reports of activities do not reflect the true nature of expenditures.

During review of policies and procedures, we found that guidance, when present, was limited. As a result, employees may not have a consistent understanding of:

- The expectation for documenting supervisory review of staff expenditures or retaining appropriate documentation.
- The policy regarding the purchase of alcohol with public funds.
- The policy on use of funds to purchase gifts for Board members and artists.

- The need to obtain price comparisons and retain documentation when purchasing equipment costing less than the established competitive bid threshold. As a result, we found multiple instances of purchases without documentation of price comparison or the need for the purchase. For example:
 - A digital camera for \$539.27 purchased by the Collection Manager.
 - A projector costing over \$860 and computer monitors costing over \$400 per monitor purchased on personal credit cards and submitted for reimbursement.

During testing we found no evidence that Cultural Council administration consistently monitored control activities to ensure that they were operating as intended. During analysis of FY 04/05 expenditures we found numerous instances of non-compliance with established policy. For example:

- Personal cell phone bills charged to the American Express Corporate Charge Card or submitted for reimbursement without evidence that the calls were business related. The Public Art Director routinely charged the cost of her personal cell phone to the corporate issued credit card. In other cases, invoices for personal cell phones were paid directly or through reimbursement requests. The cell phone policy (adopted December 2004) clearly stated that employees would only be reimbursed for business calls upon the submittal of an invoice with the business calls highlighted.
- Purchases of \$5,000 or more without documentation of competitive bids. In our sample, we had three expenditures for maintenance in excess of \$10,000 without evidence of competitive bidding:
 - An expenditure of \$14,000 for pool tile cleaning without evidence of a competitive bid. The Public Art Collections Manager explained that no contractors were interested in the job but there is no documentation to evidence that a bid was issued. In fact, in FY 05/06, a new contractor has agreed to perform the cleaning twice a year at the same cost of the single cleaning in FY 04/05.
 - An expenditure of more than \$28,000 for the repair of a leaking roof for the Turrell public art project located at SMOCA. The Collection Manager stated that there was a requirement for the work to be done by the original contractor.
 - More than \$13,000 in services related to the cleaning of sculptures and bronzes. In this instance, the company is not on contract nor was there evidence of a competitive bid process.
- Contracts, exceeding the established signature authority, signed by public art project managers.

When testing expenditures, we routinely found misclassifications of expenditures that were not caught and corrected. For example, we found office supplies and the services of a clarinet player recorded in the account for professional consultants. In fact, of the \$9,228 in expenditures charged to this account in FY 04/05, over \$1,900 was misclassified. As well, we found storage-related costs for the temporary art project at the Art Festival classified as a conservation/restoration expense and capital outlays for equipment recorded as supplies. In another case, an expenditure of almost \$600 for an artist's travel cost was recorded as educational materials. Finally, the majority of costs related to the Board-sponsored trip to Santa Monica were recorded as "Travel/Mileage" under the project title "Eldorado Park" while the payments from the Board members participating in the trip were reported as a reduction against conference expenses.

We also found that the current accounting practices at the Cultural Council are such that information provided to the Public Art Director and the Contract Administrator is not adequate to allow an effective review of purchases. For example, expenses paid with corporate charge cards only reflect the transaction as a "transfer" instead of listing the vendor master name or the nature of the distribution. Similarly, if an error in recording needs to be fixed, the audit trail records the transaction as a transfer instead of a correction with a description of the account to which the expense was moved. With limited information on the details of expenditures, considerable research must be undertaken to determine what the transaction actually related to.

CAUSE: In the annual independent financial audit, the auditors considered the Cultural Council's lack of segregation of accounting duties to be a reportable condition. The auditors attributed this to a limited number of accounting personnel. We did not analyze staffing levels and therefore, we cannot conclude that limited staff is the root cause of the current situation.

EFFECT: Insufficient internal control allows inappropriate expenditures to remain unnoticed, fosters a lack of discipline and structure by allowing non-compliance with established policies, and creates erroneous results of service provided. Board or management decisions for future Program budgets may be relying on inaccurate prior year expenditure records.

RECOMMENDATION: The City Manager should initiate a review of the Management Services Agreement between the Cultural Council and the City and pursue the opportunity to include the expectation for a sufficient internal control environment and a requirement for annual certification by Cultural Council management that routine internal audits are performed to ensure that the internal controls are working as designed.

FINDING 2: Contracts for commission of artwork adequately address indemnification but improvements are needed to better protect the City.

CRITERIA: Contracts serve to clarify agreements between parties; to provide legal protection and limit risk.

CONDITION: Contracts used by the Cultural Council when commissioning artwork appear to provide adequate protection for the City. Auditors reviewed 6 contracts with artists during the review of 30 vendors paid in FY 04/05. Contracts addressed liability and insurance requirements and indemnification of the City for a variety of occurrences including changes in capital project plans or schedules. Specifically, contracts include:

- A hazardous material clause to comply with federal, state, and local requirements.
- Ownership and intellectual property rights that give the City ownership of the art and the right to photograph and advertise the work giving credit to the artist in these materials. The artist has the responsibility to copyright the work and has intellectual property rights.
- A requirement for the contractor (artist) to have Commercial General Liability Insurance of \$1,000,000 from an insurance company with not less than a specified financial rating. Requires Automobile Liability of not less than \$500,000; Worker's Compensation; and Employer's Liability.
- Indemnity of the Cultural Council and the City from all claims for bodily injury and property damage including loss of use arising from the performance of work.
- A waiver of rights of recovery by each party against the other (the City is specified as well as the Cultural Council).
- A termination clause in which the Cultural Council can perform the artist's obligations.

We presented boilerplate language used by the Cultural Council to the acting Risk Management Director and received confirmation that the provisions on indemnification were adequate. One small change was suggested and we discussed this modification with the Public Art Director and the Contract Administrator.

During review of the contract language, we noted three areas in which improvements are possible:

- In four of the six contracts we reviewed, there was no provision discussing future obligations for maintenance and repair of the artwork. In two others, language in the contract committed the City and Cultural Council to make a good faith effort to contact the artist and involve him/her in the repair efforts in case of major damage to the artwork. Future maintenance responsibilities should be addressed in all contracts. If contractual provisions are incorporated that effectively commit the City to future actions, these contracts should be reviewed and approved by the City.
- Contracts for the commissioning of artwork that require the artist to work on City property should be approved by the Risk Management Director to ensure that the contract has appropriate indemnification clauses.
- While the contracts we reviewed incorporate a phased payment approach with detailed scope of work and deliverables schedule, the contracts did not require projects to be completed by a certain date and did not include provisions that would protect the City in case of death or disability of the artist.

CAUSE: The Management Services Agreement provides that the Cultural Council is to contract with the artist; staff has made a good faith effort to include appropriate provisions. Review by the City Attorney or the City's Risk Management Director is not a requirement under current terms.

EFFECT: Contracts prepared by the Cultural Council may commit the City to obligations, such as involving an artist in project maintenance, which may not come to light until several years later. In other cases, important issues such as future maintenance requirements, adequate insurance while on City property, or deliverables may not be addressed.

RECOMMENDATION: The Director of the Downtown Group and the Contract Administrator should pursue the opportunity to require contracts for commissioned artwork that will be accessioned into the City's art collection to be reviewed by appropriate City staff to ensure inclusion of adequate provisions to protect the City's interests and to identify potential risks to the City prior to the actual commitment to commission the project.

FINDING 3: Management controls are inadequate to ensure art projects stay within budget.

CRITERIA: Project management duties in industry and government typically include monitoring adherence to project budgets and tracking project milestones to ensure timely completion. Post-construction or implementation assessment activities include documenting whether the project met scheduled due dates and budgets.

CONDITION: Existing practices do not ensure that an appropriate level of project oversight occurs.

In the course of reviewing project files, SPA Board minutes, policies and reports we identified an overall lack of documentation associated with the public art project schedule and budget. For example, project files maintained by Public Art Program staff do not contain a project summary document that details project information such as budget changes or sources of funds. When reviewing performance measures, we noted that there is only one performance measure associated with public art. This measure tracks the number of active projects but does not address factors such as effectiveness or efficiency (i.e., meeting project due dates or adhering to project budgets).

CAUSE: Limited City oversight of public art projects.

EFFECT: The appropriate level of information is not readily available. Moreover, without performance measures, the City lacks data needed to evaluate the Cultural Council's performance as the administrators of the City's Public Art Program.

RECOMMENDATION:

1. The Director of the Downtown Group should ensure that the Contract Administrator:
 - a. Reviews the Cultural Council's established policies and procedures for project management and ensures that Public Art Program staff is sufficiently informed as to the documentation that should be retained in a project file. Specific care should be given to ensure that all financial events associated with a project are documented, including the date and amount of the initial project budget and the date and amount of any budget changes. At the completion of a project, the summary sheet should identify total project costs and funding sources.
 - b. Clarifies the expectation with Public Art Program staff for appropriate project management including managing the project within the approved budget.

FINDING 4: SPA Board policies do not reflect current practice or the commitment to public input as a foundation of the art selection process.

CRITERIA: The SPA Board and Public Art Program staff has established mechanisms such as selection panels and public outreach as a means of facilitating public participation in project decisions. The City Council, in its September 27, 2005, Work Study Session with the Cultural Council Board of Trustees expressed, several times, the importance it places on community involvement in its programs for art and culture.

CONDITION: In general, we found the selection process for public art included public members on selection panels as well as community outreach. SPA Board mission and goals can be updated to reflect this commitment, policies can be improved by requiring public participation and documentation can be enhanced.

First, the SPA Board mission statement and accompanying goals do not mention public involvement as one of the guiding principles for the selection process. As well, established policy on selection panel composition is vague, does not include a requirement for public participation and, more importantly, does not require inclusion of a representation of citizens that might be impacted by the installation of the artwork.

Second, while we found evidence of public meetings or focus groups used in four out of six projects that we reviewed,¹¹ SPA Board policies do not reflect this commitment. These meetings provide the artist with the opportunity to identify the theme, type of materials, or subject matter that reflect citizen or user views or feelings about the site. As such, public outreach should be considered a requirement of the selection process.

Finally, documentation in project files was limited when detailing composition of selection panels and other related information. In practice, we found the selection panels typically included individuals that were not Board members or City employees. We could not, however, determine the customary make up of selection panels because of the limited documentation in project files. When we were able to distinguish the ratio of internal (SPA/City) members and public members (artists, other professionals, interested citizens), the panel was either equally balanced between internal and public members or the public members were the majority. In the six projects in our random sample, we found the selection panel was generally larger (between 8 to 13 members) than outlined in policy (between 3 to 5 members).

¹¹ A meeting to obtain public input may have been held for the other two projects but auditors were unable to determine this from the project file.

CAUSE: While the Management Services Agreement and City Code requires the Cultural Council to establish guidelines for the selection of artwork, the City has not taken an active role in reviewing guidelines to ensure that expectations for community involvement and input are adequately addressed.

EFFECT: There is no framework that requires the use of a selection panel or other public outreach when selecting a public art piece that will be displayed in the community. Without documented policies to ensure adequate public participation, there may be an appearance that the selection process was arbitrarily structured. Additionally, without such policies, there may be a lack of public knowledge that members of the community were involved in art selection decisions.

RECOMMENDATIONS:

1. The Director of the Downtown Group and the Contract Administrator should require the Cultural Council to develop sufficient guidelines for the Public Art Program. Specific attention should be given to records retention, including such documentation as:
 - a. The selection panel composition including the name of each member, the constituency represented, and whether the member had a voting or non-voting role.
 - b. A summary of the selection panel results.
 - c. Whether the Board adopted the selection panel recommendation and if not, the reasons why.
 - d. The date and invitation for community meetings or focus groups held after the artist is selected and, if such a meeting is not held, an explanation of why such a meeting was deemed unnecessary.
2. The Director of the Downtown Group and the Contract Administrator, should consider, in consultation with the Public Art Program staff and Scottsdale Public Art Board, if changes are needed to the existing guidelines on selection of artwork to ensure that practices appropriately reflect the City's position on:
 - a. Commitment to public participation during the selection of public art.
 - b. Use of a selection panel, including voting rights, selection of panelists, and documentation of the selection process.
 - c. Community outreach efforts as part of the consideration for siting and selecting public art.

FINDING 5: Improvements are needed to protect the City against unforeseen costs associated with the acquisition of art.

CRITERIA: To ensure that adequate consideration is given to future maintenance costs, City Code, §20-121(c), specifically requires the prior approval of the City Manager or designee if a proposed piece of art will require extraordinary operations or maintenance expenses.

CONDITION: We found that neither the City nor the Cultural Council has established a process that adequately addresses the issue of ongoing operational costs or future maintenance costs. As such, there is no:

- Requirement for future operating or maintenance costs to be presented as part of the decision package when considering the award of a contract or the purchase of a piece of art.
- Documentation of the criteria that will be used to determine if the approval of the City Manager is required.
- Written agreement between the Cultural Council and the City to outline the roles and responsibilities of the two parties when budgeting for future costs, reaching a decision that maintenance is necessary, or procuring the services needed once a decision has been reached that maintenance or restoration is needed.

Our review of minutes (SPA Board and PACC) revealed that considerable discussion takes place during public art project selection and that maintenance factors such as longevity, heat conduction properties, and special cleaning needs of the proposed materials may be included. Cultural Council staff also provided documentation of one instance in which the artist was queried on future maintenance costs for an upcoming project. We found, though, that current practices are such that the consideration of future maintenance costs is generally based on the opinion of the artist because there is no requirement for an independent review of the proposal. We also found that there is no requirement for the artist to present written specifications on materials and construction techniques as part of the selection process. In fact, standard boilerplate language used by the Cultural Council does not require documentation of maintenance requirements until the final phase of the project. As a result, decisions may be made on project selection without sufficient information to effectively consider future maintenance costs.

This process creates a potential risk for the City because future operational and maintenance expenses become an obligation of the City. In some instances, the integration of art into a component of a public facility has increased ongoing operational costs. At the El Dorado Aquatic Center, cleaning and resealing the pool tile cost almost \$14,000 in FY 04/05 because of the unique nature of the art incorporated into the pool. One City official

commented that if the maintenance implications had been fully understood, it might have affected the project selection decision. A contractual requirement for the Turrell piece (installed at SMOCA) governs how repairs are to be handled. As a result, public funds covered slightly more than \$28,000 in costs associated with roof repairs without competitive bid.

We inquired about established thresholds that would be used to reach a conclusion that a proposed project would require extraordinary maintenance or operational costs and found that there were none. According to the Public Art Director, to her knowledge no project has ever been taken to the City for advance approval. We asked, as an example, about the process for review of future maintenance costs for the artwork incorporated in the Pima Freeway and found that the project was approved without the development of a maintenance schedule or clear agreement as to which organization¹² would be responsible for bringing forward a budget proposal and contract for repair work when it became necessary. Even now, six years after the completion of the work, there is no final conclusion as to whether the City or the Cultural Council is responsible for planning the maintenance and no agreed upon maintenance schedule. According to a preliminary estimate, it may cost the City more than three-quarters of a million dollars to repair broken pieces and repaint the walls sometime within the next four years if the restoration follows the projected lifespan of seven to ten years.¹³ In addition, the City will need to address the issue of project oversight and traffic management.

We also found that the Management Services Agreement does not give the City a role in selection, management, or control of contractors that will be hired to undertake work on integrated art projects in City facilities or when work must be done on City owned property. Under current practices, Cultural Council staff assumes the responsibility for future maintenance and passes the cost to the City as an expense of the Public Art Program. However, because capital project monies have been used for maintenance costs, no budget request is submitted to City Council for review and consideration and, therefore, there is no line item in the City's budget to provide citizens with an opportunity to discuss costs. More importantly, though, the Management Services Agreement does not require adherence to the City's Procurement Code to ensure that City bid limits and other processes are followed when procuring these services. As such, there is little the City can do to control costs passed on by the Cultural Council for maintenance of City owned artwork. In FY 03/04, according to Cultural Council financial statements, expenditures for conservation and maintenance were \$35,000. Our work

¹² The City Council has committed, in an agreement with the Arizona Department of Transportation, to pay costs associated with the maintenance of the artwork but there is no written agreement between the City and the Cultural Council addressing this issue.

¹³ Although estimated for 2009 in the most recent maintenance schedule, in December 2005, the Public Art Director and Contract Administrator told auditors that restoration may not be necessary until 2014.

calculated expenditures of \$105,000 in FY 04/05 and, based on the budget, these costs are estimated to reach \$138,000 in FY 05/06.

CAUSE: The Cultural Council has not been required to develop guidelines to ensure compliance with City Code requirements. Moreover, the City did not undertake sufficient risk analysis of the process that would be followed for the selection of artwork before entering into the Management Services Agreement. Provisions in City Code and the Agreement were developed to isolate the selection of artwork from the political arena. When the decision was made to integrate art as a part of the structural component of infrastructure such as buildings and roadways, the need for more City control over the maintenance aspect of the artwork was not addressed.

EFFECT: Inability to control future operating costs and limited ability to appropriately plan costs for inclusion in the balanced budget forecasts required under adopted Comprehensive Financial Policies. In giving the Cultural Council the responsibility for public art maintenance, the City has created a situation in which an agent of the City can bind future City Councils through contractual requirements that are not reviewed and approved by the City Attorney, Risk Management Director, or other responsible parties at the City. As a result, contracts developed by the Cultural Council staff may include provisions that give the artist control over future maintenance and restoration efforts without setting out a pre-established fee for the future services or incorporating provisions that reduce the risk to the City.

RECOMMENDATIONS:

1. The City Manager should initiate a review of the Management Services Agreement to pursue the opportunity to include a prohibition against entering into a contract for the purchase, commission, or donation of a piece of artwork that will be accessioned into the City's collection without review and approval of the terms and conditions by appropriate parties at the City, if the agreement commits the City to a future action.
2. The Director of the Downtown Group and the Contract Administrator should work with the Cultural Council to obtain an evaluation of the City's art collection and deliver a report listing pieces, and the estimated cost, for any maintenance and/or restoration needed in the next fiscal year and each of the following four years for inclusion in the preparation of the budget for FY 06/07.

FINDING 6: Use of public art monies for the purchase of artwork that will not be displayed in a public context is contrary to the intent of the Public Art Ordinance.

CRITERIA: Scottsdale Revised Code, §20-121, addresses the City's responsibility for enhancing the environment with public art. The SPA Board, in its policies, defines the role of public art as follows:

The Public Art Program integrates the art and ideas of artists and designers into public places. Generally, artwork is sited in easily publicly accessible locations in order to serve citizens and visitors engaged in aspects of everyday life.

CONDITION: The Cultural Council has separated the City's art collection into three different components and in June 2005, the SPA Board voted to approve the development of the following collections:

- The Scottsdale Museum of Contemporary Art (SMoCA) Collection
- The Scottsdale Public Art (SPA) Collection
- The Scottsdale Portable Works (SPW) Collection

Cultural Council staff describes the Portable Works Collection as:

- Hanging art that may be located in City buildings or the offices of public art or City staff.
- The 'hanging' or portable collection the City has acquired through donations over many years.
- Museum quality pieces that are not appropriate for display at SMoCA.
- Stored in the vault for protection or hanging in City buildings frequented by the public such as the library or customer service center or in offices of City personnel.

Under existing City Code, the appropriation is to be used for the accession of art. The only requirement is for the piece to become part of the City collection.

Contrast this with restrictions placed on private developers that must comply with the cultural improvements program. For example, under this program, the Cultural Council may not consider ornamental or functional elements created by the project architect as meeting the requirement for installation of an original piece of artwork. Further, provisions go on to state that artwork should be placed where visible from the street, or in exterior spaces such as walkways, plazas and exterior building surfaces.

Under current parameters, though, City monies appropriated for public art use were approved for use in acquiring:

- A \$5,000 piece of artwork that will be displayed in the lobby of the offices of the Cultural Council. This space is leased by the Cultural Council and only qualifies as a location for a piece of artwork due to language in City Code that allows pieces in the City's collection to be displayed "in such other location as may be deemed beneficial to the City." Since placement decisions have been delegated to the Cultural Council, the City has no ability to protest use of public funds for artwork that will be displayed in facilities not controlled by the City.
- Annual additions to a collection of prints known as the "Segura Prints" (an expenditure of \$2,668 in FY 04/05). Without a requirement in City Code specifying that artwork purchased with funds appropriated for public art is to be displayed in a public context (i.e., easily accessible to citizens and visitors while engaged in daily activities), money may be used to purchase artwork that may be displayed only in a museum setting or in offices of City staff or Cultural Council staff.

CAUSE: Current language in City Code was crafted to address the City's desire to create a funding source for the commissioning or purchase of artwork that would be displayed in public places. With this focus, the issue of the acquisition, through purchase or donation, of pieces that would be displayed, in a different context (i.e., in a museum setting or in offices of staff [City or Cultural Council staff] not readily accessible to the public) was not addressed.

EFFECT: Allowing public art monies to be used to acquire pieces that will not be displayed in a public context (i.e., on the street, in a park, or on the exterior or common space of a public building) is inconsistent with the original intent of the Public Art Ordinance. Moreover, using funds for the purchase of artwork that does not meet the definition of public art may create the perception that more funds are available than needed.

RECOMMENDATION: The Director of the Downtown Group and the Contract Administrator should review and consider in consultation with the Public Art Program staff and Scottsdale Public Art Board:

- a. Appropriate restrictions for the placement of public art for the preparation of a proposed definition of "public location" for use in crafting a re-draft of the Public Art Ordinance.
- b. A proposed definition for the term "public art" that can be used when crafting the new Public Art Ordinance as a means of determining if a proposed piece of artwork should be purchased with restricted funds.

FINDING 7: Use of funds for temporary art does not comply with City Code provisions.

CRITERIA: Chapter 20, §121 (d), states that public art purchased with funds appropriated for this purpose are to become property of the City and part of the City's permanent collection. Further, since public art is purchased with capital funds, expenditures should typically result in a capital asset for the City.

CONDITION: The Cultural Council has used funds appropriated for the purchase of public art to fund installation of temporary art.

In FY 04/05, slightly more than \$6,000 was expended for an interactive display of vintage bicycles at the Scottsdale Festival of the Arts.¹⁴ More recently, \$4,250 was budgeted to commission a balloon display on top of the Scottsdale Center for the Performing Arts as part of the thirtieth anniversary celebration. In prior years, monies were spent for vinyl skins on public buses that displayed art and poetry. According to Public Art Program management, temporary art is becoming a more prevalent and important form of public art. Cultural Council staff also stated that temporary art may be increasingly important in engaging the community in public art as Scottsdale reaches build-out.

Temporary art has a limited lifespan and, therefore, does not result in an addition to the City's permanent art collection. As such, using funds provided under Chapter 20, Article VII, is not appropriate.

CAUSE: The issue of temporary art and the funding source for this form of display has not been addressed.

EFFECT: Non-compliance with City Code.

RECOMMENDATION: The Director of the Downtown Group and the Contract Administrator should review and consider, in consultation with the Public Art Program staff and Scottsdale Public Art Board, appropriate funding sources for future purchases of artwork that do not meet the definition of public art and a proposal for consideration as part of the development of the new Public Art Ordinance.

¹⁴ In FY 05/06, the budget for temporary art at the Art Festival was \$14,000.

APPENDIX A – MANAGEMENT RESPONSE



The Downtown Group

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January 17, 2006,

To: Cheryl Barcala, City Auditor

From: John Little, Downtown Group
Craig Clifford, Financial Services

A handwritten signature in black ink, appearing to read "John Little", is written over the "From:" line.

Re: Management Response for Percent for Art Audit

Thank you for the opportunity to comment upon the Percent for Art Audit Report prepared by your office. The arts, in all its forms, and the City's partnership with the Scottsdale Cultural Council are important contributors to Scottsdale's desirable quality of life. It's important, therefore, that as we build upon the national reputation of our Public Art Program, we are also accountable to Scottsdale residents for the funds that are allocated to this program.

We concur with all of the recommendations as noted in the management responses. In fact, work is already underway to address many of these suggestions. The development of performance measurements will be a priority as we continue preparations for the fiscal year 2007 budget. Further, the newly formed task force consisting of three council members and three members of the Scottsdale Cultural Council Board of Trustees will discuss these timely recommendations as they deliberate the update of the public art ordinances and a new master agreement.

Cc: Jan Dolan, City Manager
Ed Gawf, Deputy City Manager
Neal Shearer, Assistant City Manager
Frank Jacobson, CEO President, Scottsdale Cultural Council

EXHIBIT A – PUBLIC ART DETAIL EXPENDITURES

Detail of Public Art Program Budgeted and Actual Expenditures (in dollars)
As reported by the Cultural Council for FY 04/05 (Note 1)

		Actual	Budget	Over/Under Budget
Salaries	Full-time	239,035		
	Part-time and Overtime	5,349		
	SubTotal Salaries	244,384	222,021	22,363
	Medical Insurance	22,229		
	Life Insurance	756		
	Long Term Disability	911		
	Retirement	9,031		
	Payroll Taxes	18,698		
	Workers Compensation	441		
	SubTotal Benefits	52,066	57,644	-5,578
Other Costs	Bank Charges	14		14
	Company Meetings	5,031	6,375	-1,344
	Computer Supplies	3,383		3,383
	Conferences/Seminars	3,128	7,250	-4,122
	Conservation/Restoration	75,917	76,300	-383
	Depreciation			
	Building Improvements	491		491
	Equipment	124		124
	Computer	2,727		2,727
	Educational Materials	11,062	23,850	-12,788
	Equipment Maintenance	589		589
	Equipment Purchases	4,450	6,300	-1,850
	Framing	101	2,500	-2,399
	General Program Support	1,558	500	1,058
	General Liability Insurance	4,318		4,318
	Insurance - Administration	147		147
	Loan Interest	30	2,450	-2,420
	Occupancy Costs		12,857	-12,857
	Office Supplies	3,692		3,692
	Photocopies	1,052	2,500	-1,448
	Photo Processing	2,203	10,000	-7,797
	Postage/Shipping	3,862	6,400	-2,538
	Professional Consultants	7,913	13,000	-5,087
	Program Supplies	230	4,500	-4,270
	Signage/Labels	318	5,000	-4,682
	Software Support	70		70
	Subscriptions	1,094	750	344
	Tax and License	65		65
	Telephone Service	3,240	6,500	-3,260
	Travel/Mileage	6,507	4,500	2,007
	SubTotal Other Costs	143,316	191,532	
Total		439,766	471,197	-31,431

Note 1: Amounts shown net of costs attributed to collection management at SMOCA.

SOURCE: Cultural Council financials for FY 04/05 expenditures and FY 04/05 Budget approved by the Contract Administrator. Numbers shown in **bold/italic** are expenses charged by the Cultural Council.

EXHIBIT B – LIST OF INDIVIDUAL CAPITAL IMPROVEMENT PROJECTS

Projects and Funding Source for the FY 05/06 Appropriation (in dollars)

Project Type	General Fund	Water Rates	Sewer Rates	Totals
Technology Related Assets				
Crime Laboratory Equipment Replacement	16,900			16,900
Police Vehicle Location System	154,400			154,400
Police Document Imaging	43,200			43,200
Police Portable Radio Replacement	673,500			673,500
Enhanced Public Meeting Technology	51,600			51,600
Alternate Computing Site	750,000			750,000
Software Application Tracking System	68,500			68,500
Public Access Computers	88,100			88,100
Private Wireless Infrastructure Study	75,000			75,000
Digital Terrain Model	350,000			350,000
Document Management - Customer Service	195,000	70,000	63,000	328,000
Time and Attendance	73,500			73,500
E-Procurement	67,500			67,500
Hand-Held Meter Reading System		109,300		109,300
Tax, Licensing, and Alarm System	293,900			293,900
Utility Billing	(193,900)			(193,900)
Network Infrastructure	270,400	18,900	6,200	295,500
PC Equipment	891,900	62,200	20,600	974,700
Security Investment	29,000			29,000
Server Infrastructure	644,400	45,000	14,900	704,300
Telephone Equipment	194,500	12,500	2,100	209,100
Web Content Management	144,200			144,200
CityCable Audio	130,000			130,000
Land Survey Asset Management	16,900			16,900
Records Imaging	102,000			102,000
AFIS Workstation Replacement	20,700			20,700
Docking Stations/Mounting Kits - Police Cars	13,000			13,000
Police Radio Infrastructure Replacement	500,000			500,000
NPDES Monitoring Stations	152,000			152,000
Severe Weather Warning and Response	182,000			182,000
Fire Station - Wireless Technology	253,100			253,100
<i>SubTotal Technology Related Assets</i>	6,251,300	317,900	106,800	6,676,000
Water & Sewer Construction				
91st Avenue - Salt River Outfall Sewer			4,500,000	4,500,000
91st Avenue Wastewater Treatment Plant			4,000,000	4,000,000
Arsenic Mitigation Treatment		40,000,000		40,000,000
CAP Plant Expansion		1,600,000		1,600,000
CAP Plant Regulatory Compliance		25,560,000		25,560,000
CAP Water Connection		1,000,000		1,000,000
Chaparral Water Treatment Plant		4,770,000		4,770,000
Inner Circle Booster Pump Station		3,000,000		3,000,000
Regional GAC Regeneration Facility		270,000		270,000
Security Enhancements		350,000		350,000
Sewer Collection System Improvements			850,000	850,000
Water Distribution System Improvements		6,000,000		6,000,000
Water Quality Improvements - Southern Neighborhoods		1,000,000		1,000,000
Water Quality Laboratory Equipment		580,000		580,000
<i>SubTotal Water & Sewer Construction</i>		84,130,000	9,350,000	93,480,000

Compliance With City Code Provisions for Public Art
City Auditor Report No. 0508

Project Type	General Fund	Water Rates	Sewer Rates	Totals
Public Facility Improvements				
Civic Center Library Improvements	133,000			133,000
Mustang Library Improvements	103,500			103,500
Irrigation Pump Replacement	214,700			214,700
MMR Maintenance Compound Expansion	120,000			120,000
Mescal Park Improvements	150,000			150,000
Playground Equipment Replacement	134,400			134,400
Recreation Amenity Replacement	150,000			150,000
Spring Training Facility	2,200,000			2,200,000
TPC Saline Impact Remediation	1,000,000			1,000,000
TPC Drainage Improvements	1,280,000			1,280,000
WestWorld Stall and Barn Renovations	352,000			352,000
WestWorld Facilities and Parking	6,877,500			6,877,500
WestWorld Site Improvements	1,667,000			1,667,000
SCA Improvements	1,227,500			1,227,500
SCA Facility Upgrade	129,400			129,400
Facility Modifications for Accessibility	250,000			250,000
Asset Consolidation				2,000,000
(One Civic Center Building Renovations)	2,000,000			
Elevator Renovations	212,400			212,400
Facility Repair and Maintenance Program	645,000	22,000		667,000
<i>SubTotal Public Facility Improvements</i>	18,846,400	22,000		18,868,400
Revitalization & Downtown				
Downtown Electrical Upgrades	450,000			450,000
Downtown Facade Program	250,000			250,000
Downtown Lighting Improvements	250,000			250,000
Downtown Restrooms	250,000			250,000
Downtown Open Space	4,000,000			4,000,000
Loloma District Plaza	250,000			250,000
Loloma District Streetscape Improvements	350,000			350,000
Neighborhood Enhancement Partnership	75,000			75,000
Replace Downtown Crosswalks	89,100			89,100
South Canal Bank Public Parking Garage	475,000			475,000
Undergrounding Electrical Powerline Program	500,000			500,000
<i>SubTotal Revitalization & Downtown</i>	6,939,100			6,939,100

Compliance With City Code Provisions for Public Art
City Auditor Report No. 0508

Project Type	General Fund	Water Rates	Sewer Rates	Totals
Drainage & Flood Control				
Loop 101 Outlet Storm Drain	1,070,000			1,070,000
Reach 11 Drainage Improvements	456,000			456,000
Powerline Interceptor Channel	190,000			190,000
Granite Reef Watershed	(2,675,000)			(2,675,000)
Neighborhood Stormwater Management Improvements	(800,000)			(800,000)
Pima Road Drainage System	(398,000)			(398,000)
North Scottsdale Road Corridor Drainage	771,000			771,000
<i>SubTotal Drainage & Flood Control</i>	(1,386,000)			(1,386,000)
Fire Services Facilities				
Fire Station - South Quadrant	1,165,000			1,165,000
Downtown Fire Station	379,200			379,200
Via Linda Expansion	243,000			243,000
Desert Mountain Relocation and Expansion	800,000			800,000
Jomax Station	1,565,000			1,565,000
Fire Burn Building Update	299,000			299,000
<i>SubTotal Fire Services Facilities</i>	4,451,200			4,451,200
Total Additions to Capital Improvement Plan FY 05/06	35,102,000	84,469,900	9,456,800	129,028,700
Amount Contributed to Percent for Art Account	351,020	844,699	94,568	1,290,287

EXHIBIT C – NOT-FOR-PROFIT GUIDANCE

The Audit and Accounting Guide, *Not-for-Profit Organizations*, outlines the use of fund accounting as:

...a technique used by some not-for profit organizations for purposes of internal recordkeeping and managerial control and to help ensure that the use of resources is in accordance with stipulations imposed by donors and other resource providers and with self-imposed limitations designated by the organization's governing board. Under fund accounting, resources are classified into funds associated with specific objectives.

The Guide further explains fund accounting with a quote from *Montgomery's Auditing*:

...As used in nonprofit accounting, a fund is an accounting entity with a self-balances set of accounts for recording assets, liabilities, the fund balance and the changes in the fund balance. Separate accounts are maintained for each fund to ensure that the limitations and restrictions on the use of resources are observed. Though the fund concept involves separate accounting records, it does not entail the physical segregation of resources. Fund accounting is basically a mechanism to assist in exercising control over the purpose of particular resources and amounts of those resources available for use.

Chapter 16 of the Guide outlines the purpose of fund accounting:

...a system of recording resources whose use may be limited by donors, granting agencies, governing boards or other individuals or entities or by law.... Each fund consists of a self-balancing set of asset, liability and fund balance accounts.

Section 16.04 of the Guide defines unrestricted current funds (commonly known as unrestricted operating or general funds) as used for the recording of activities that are supported by resources over which governing boards have discretionary control.

Section 16.06 defines restricted funds (restricted operating or specific purpose funds) as used to record organizations' activities that are supported by resources whose use is limited by external parties to specific operating purposes. Fund balances of restricted current funds represent net assets held for specific operating activities that have not yet been used.

Under Financial Accounting Standard Board (FASB) Statement No. 117, presentation of financial information on a fund basis is not required. However, the Statement does not preclude the presentation of disaggregated information by individual fund or fund group as long as the required aggregate amount for the required classes of assets (permanently restricted, temporarily restricted, and unrestricted) are displayed. Paragraph 50 of Statement 117 specifically notes that internal accounting and recordkeeping systems are matters outside the purview of FASB.

EXHIBIT D – 1985 COUNCIL ACTION REPORT

CITY COUNCIL ACTION REPORT



DATE: NOVEMBER 4, 1985
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: COMMUNITY SERVICES/ARTS
SUBJECT: ORDINANCE NO. 1836, ESTABLISHING
A MUNICIPAL ART FUND

AGENDA ITEM NO. 4

Bob Frost

STAFF

RECOMMENDATION

It is recommended that the City Council adopt Ordinance No. 1836, amending Title 2, Chapter 4, Article 1 of the Scottsdale Revised Code, establishing a Municipal Art Fund.

FACTS

At its regular meeting on September 12, 1985, the Fine Arts Commission voted to recommend that the Mayor and City Council adopt an ordinance which provides that a fixed percentage (1%) of the City's authorized annual capital construction cost be set aside in the Fine Arts Trust for the selection, acquisition and installation of artworks in public places.

Scottsdale is experiencing phenomenal growth in all areas and the Fine Arts Trust is no longer a viable vehicle for funding the needed art enhancements. The Commission's long-range visual arts plan lists many potential sites for exterior artworks in varied areas of the City and numerous new buildings which should be enriched with appropriate interior art provided at the earliest possible time to assure integration of the work with its site.

For purposes of example only, if the proposed program would have been in place since 1981, the following would have been the results:

Year	Approved CIP Budget	1%
1985-86	\$11,610,000	\$116,100
1984-85	14,400,000	144,000
1983-84	9,400,000	94,000
1982-83	6,886,000	68,860
1981-82	6,757,071	67,571
Totals	\$49,053,071	\$490,531

FISCAL IMPACT

One percent (1%) of the Capital Improvement Program funds in the approved annual budget will be allocated to the Fine Arts Trust. The funding source will be pro rated by fund type. Interest will accrue in this trust based on the City's regular monthly investment earnings.

ACTION TAKEN

Approved 11-4-85


7/c

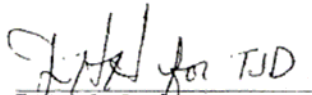
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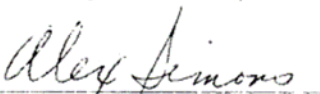
CITY COUNCIL ACTION REPORT

ANALYSIS AND CONCLUSION

The option exists to include General Obligation, Revenue, and Municipal Properties Corporation Bonds in the basis for computation of the 1%. However, this is not recommended because the citizens may be reluctant to pay for bond issues which include an additional 1% for the arts. In addition, the funds generated from bond issues would be in excess of the amount needed for a program of this type.


Robert A. Frost
Community Services Dept. Head


Tommy J. Davis
Assistant City Manager


Alex Simons, Chairman
Fine Arts Commission

Attachment: Ordinance No. 1836

XX2-1142 (5-84)